RNI No. MAHBIL /2009/31744
Reg. No. MH/MR/South-318/2013-15

महाराष्ट्र शासन राजपत्र

भाग एक–ल

वर्ष ६, अंक २७] गुरुवार ते बुधवार, सप्टेंबर १८-२४, २०१४/भाद्र २७-आश्विन २, शके १९३६ [पृष्ठे ४०, किंमत : रुपये २३.००

प्राधिकृत प्रकाशन

(केंद्रीय) औद्योगिक विवाद अधिनियम व मुंबई औद्योगिक संबंध अधिनियम यांखालील (भाग एक, चार-अ, चार-ब आणि चार-क यांमध्ये प्रसिद्ध केलेल्या अधिसूचना, आदेश व निवाडे यांव्यतिरिक्त) अधिसूचना, आदेश व निवाडे.

IN THE INDUSTRIAL COURT, AT MUMBAI

COMPLAINT (ULP) No. 971 OF 1990.—Rasiklal Popatlal Vajani (Since deceased through widow Neela R. Vajani), 144/4910, Nehru Nagar, Kurla East, Mumbai 400 024.—*Complainant*—*Versus*—(1) M/s. Maganlal Dresswalla, 73/75/77, Bhuleshwar Road, Mumbai 400 002, (2) Harilal P. Dresswalla, (3) Girish P. Dresswalla, Nos. 2 and 3 partners of M/s. Maganlal Dresswalla, 73/75/77, Bhuleshwar Road, Mumbai 400 002.—*Respondents.*

In the matter of complaint of unfair labour practices under item 9 of Sch. IV of the M.R.T.U. and P.U.L.P. Act.

Present.—Shri P. P. Patil, Member, Industrial Court, Mumbai.

Appearances—Mr. P. M. Patel, Advocate for Complainants.

Mr. K. K. Thakkar, Advocate of the Respondents.

Judgement And Order

(Dated the 23rd July 2003)

1. The Complainant Rasiklal Vajani (deceased) after his death, his wife Neela R. Vajani claiming that the Respondents are engaging in unfair labour practice under item 9 of Sch. IV of the M.R.T.U. and P.U.L.P. Act, 1971 by not assigning the work and failure to pay arrears of salary and other benefits.

2. The facts in brief of the complaint are as under :—

The Complainant Rasiklal (now deceased) was in the employment of the Respondent company as Salesman since 1958 on the consolidate salary of Rs. 1222 per month. Respondent No. 1 is a Partnership firm which was carrying on the business of selling Sarees etc. and the Respondent Nos. 2 and 3 are its partners. Respondents Nos. 2 and 3 are not allowing the Complainant to resume his duty from 20th April 1990 and committed unfair labour practices. The deceased Complainant was sick therefore, could not attend duty from 13th January 1990 onwards. When the Complainant was fit to resume duty *i.e.* 20th April 1990 went to the

Respondents and requested to assign work but he was not allowed by the Respondents to resume his duty. Therefore, a letter was sent to the Respondents in the month of June, 1990, which was replied by the Respondent and in the reply, it was stated that the deceased Complainant was absent without intimation and without producing medical certificate wanted to resume his duty. The Complainant had been to the Respondents alongwith the medical certificate issued by the medical practitioner, but the Respondents did not allow him to resume his duty and asked him to produce medical certificate of ESI doctor. Since 20th April 1990, the Respondents did not pay the salary. The services of the deceased Complainant were not terminated, therefore, he is entitled to the salary from 20th April, 1990.

3. After death of the original Complainant Rasiklal Vajani, his wife Mrs. Neela Vajani joined as the Complainant and she is claiming relief of arrears of salary and other benefits from 20th April 1990 together the interest.

4. The Respondents have filed their written statement at Exh. C-9 contending therein about legal termination of service of the deceased Complainant Rasiklal with effect from 2nd August 1990, therefore, the present complaint itself is not maintainable. It is, further contended that there was full and final settlement arrived at between the Complainant and the Respondents on 24th November 1995 and to that effect, the Complainant Neela has signed the receipt of payment of Rs. 36,000. The cheque of Rs. 36,000 was issued by the Respondents in favour of Neela, which was handed over to the Advocate Mr. Pankaj Patel. In view of the said full and final settlement, between the parties as well as termination of service of the deceased Complainant, the present complaint is not maintainable. The Respondents have said about payment of Rs. 5000 to the deceased Complainant for the medical expenses. The services of the deceased Complainant were terminated on account of his rude and arrogant behaviours. The deceased Complainant had abused the Partners and Manager and thereby committed act of subversive of discipline. The allegations of committing unfair labour practices under item 9 of Sch. IV of the M.R.T.U. and P.U.L.P. Act, 1971 are denied by the Respondents.

5. On the pleadings of the parties, my Learned Predecessor was pleased to frame the following issues, to which I have noted my findings as under :—

Issues.—	*Findings.*—
(1) Whether the Complainant has proved that the Respondents have committed unfair labour practices under item-9 of Schedule IV of the M.R.T.U. and P.U.L.P. Act, 1971 ?	No
(2) Whether the Complainant is entitled to get any relief as prayed in the present complaint ?	No
(3) What orders ?	Complaint is dismissed.

Reasons

6. The real controversy involved in the complaint is relating to arrears of salary and other benefits. The complaint was filed by the deceased Rasiklal Vajani. His claim was also for issuing directions to the Respondents by an order to assign work to him. There is no dispute about the death of Rasiklal Vajani and, thereafter, his wife Neela Vajani has been brought on record as the Complainant and contesting the present complaint. In view of this, the relief in respect of giving directions to the Respondents to assign work becomes reductant, and only the issue for determination is of payment of arrears and other dues. According to the Complainant, she has not received the arrears of the salary amount. The Complainant has examined her son Mr. Ashwin Vajani who made a statement on oath in respect of sickness of his father Rasiklal and he was fit to resume duty on 20th April 1990, but the Respondents did not allow to resume his duty. In the cross examination, the witness Ashwin has admitted that his father (the deceased Complainant) was asked to produce the medical certificate of ESI authority, but his father had produced the medical certificate of the private medical practitioner, Dr. Kelkar, which was not considered by the Respondents. The witness Ashwin has further admitted in clear terms about receipt of Rs. 36,000 by his mother (the Complainant Neela Vajani) by way of full and final settlement of his claim. Further, it has come in the evidence of the witness Ashwin that the amount of Rs. 36,000 was given to the Complainant Neela Vajani by the Respondents by cheque.

7. The Respondent company has examined its witness Mr. Girish and brought on record through him acceptance of cheque of Rs. 36,000 towards full and final settlement by the Complainant Neela Vajani. The witness Girish has further stated the illness of the deceased Rasiklal and his absence from duty therefore was asked to produce medical certificate from the ESI Authority, but it was not produced. The witness Girish for the Respondents has admitted that the deceased Rasiklal came to report on duty in the month of April, 1990 but he was asked to produce medical certificate authorised under the ESI Act and he could not produce it and remained absent from duty from April, 1990 onwards.

8. The learned Advocate for the Respondents has invited attention of the Court to the receipt dated 21st November 1995 in respect of the receipt of Rs. 36,000 by the Complainant Neela Vajani towards full and final settlement. Xerox copy of the cheque for Rs. 36,000 dated 3rd November 1996 also produced by the Respondents, but did not take pain to prove the document *i. e.* the payment receipt and xerox copy of the cheque. By letter dated 14th February, 2001 the Respondents are trying to show that the said cheque was credited in the account of the Complainant Neela Vajani on 28th November 1995. The Respondent's learned Advocate during the course of his argument raised objection to the maintainability of the present complaint in view of termination of services of the deceased Rasiklal Vajani on proving serious misconduct, therefore, this Court has no jurisdiction to entertain this complaint and in support he placed reliance on the case of Supertex (India) Corporation Limited *V/s.* R. K. Pandey and another reported in *2001 III CLR 299 Bombay,* wherein held :—

> "It is held as follows (1) Industrial Court had no jurisdiction to entertain complaint in respect of items 1(a) and 1(b) of Sch. IV the Act; (2) Petitioner employee has in evidence before the Court justified termination of service of the Respondents and, therefore, the order of the Industrial Court directing reinstatement is not sustainable and is liable to be quashed; (3) Petition filed by the Respondents is dismissed."

Further, the learned Advocate for the Respondents has also placed reliance on the case of A-Z Industrial Premises Co-op. Society Limited *V/s.* A. T. Utekar and others, reported in *1997 II CLR 1033 Bombay,* wherein held :—

> "The complaint filed by the employee under item 9 of Sch. IV, of course, can be tried by the Industrial Court, but in no case, the Industrial Court try and decide the complaint relating to unfair labour practices in item 1 of Sch. IV. The Industrial Court, therefore, has no jurisdiction to decide the present complaint made by the employee relating to unfair labour practices described in item 1 of Sch. IV of the Act."

There is no dispute when the termination of service of the employee and if this action the employee wants to challenge, certainly, the Labour Court has exclusive jurisdiction over such unfair labour practices as it covers under item 1(a) of Sch. IV of the M.R.T.U. and P.U.L.P. Act. But in the instant case, the Respondents have admitted the claim of the Complainant to the extent of arrears of salary, therefore, by way of full and final settlement was paid Rs. 36,000 to the Complainant Neela Vajani. The instant case is not for challenging the termination of service of the deceased Complainant Rasiklal. The claim for recovery of arrears of salary survives after the death of Rasiklal, but during his life time his claim was to issue directions to the Respondents to allow him to resume duty and assign the work. But this relief now becomes redundent in view of the death of Rasiklal Vajani. The Complainant has failed to prove that the Respondents have engaged in unfair labour practices covered under item 9 of Sch. IV of the M.R.T.U. and P.U.L.P. Act, because she has received the amount towards arrears of salary of Rs. 36,000. Unless the unfair labour practices establish against the employer (Respondents), the Complainant cannot claim any relief. No evidence either oral or documentary is made available to the Complainant of proving unfair labour practices as alleged against the Respondents, therefore, the present complaint deserves to be dismissed as per the order pass below :—

Order

Complaint (ULP) No. 971 of 1990 is dismissed. No order as to costs.

P. P. PATIL,
Member,
Industrial Court, Mumbai.

Mumbai,
Dated the 23rd July 2003.

K. G. SATHE,
Registrar,
Industrial Court, Mumbai.
Dated the 29th July 2003.

IN THE INDUSTRIAL COURT, MAHARASHTRA AT MUMBAI

CRIMINAL REVISION APPLICATION (ULP) No. 4 OF 1993.—In MISC. CRIMINAL COMPLAINT (ULP) No. 78 of 1993.—(1) Burroughs Welcome (India) Limited, 16, NGN Vaidya Marg (Bank Street), Fort, Mumbai 400 023, (2) Dr. S. M. Dixit, Vice President (Organisation Development), Burroughs Welcome (India) Limited, Fort, Mumbai 400 023, (3) Shri S. K. Guha, Controller of Finance, Burroughs Welcome (India) Limited, Fort, Mumbai 400 023.—*Applicants* (Original Accused).—*Versus*—(1) Bhartiya Kamgar Karmachari Mahasangh, 5, Navalkar Lane, Dr. Mane Sabhagraha, Near Prarthana Samaj, Mumbai 400 004, (2) Burroughs Welcome Staff and Workers Union, 21, Bharat Kunj, Sion (West), Mumbai 400 022, (3) Mrs. P. Martins Joint Secretary, Burroughs Welcome Staff and Workers Union, Sion, Mumbai 400 022, (4) Shri N. B. Vaity, Joint Secretary, Burroughs Welcome Staff and Workers Union, Sion, Mumbai 400 022, (5) Shri L. K. Nakhwa, Advisor, Negotiating Committee, Burroughs Wellcome Staff and Workers Union, Worli-Koliwada, Mumbai 400 025, (6) The Presiding Officer, Vth Labour Court, Mumbai.—*Respondents.*

REVISION APPLICATION (ULP) No. 39 OF 1993.—(1) Burroughs Welcome Staff and Workers Union, 21, Bharat Kunj, Sion (West), Mumbai 400 002, (2) Mrs. P. Martins, Joint Secretary, Burroughs Welcome Staff and Workers Union, Mumbai 400 029, (3) Shri N. B. Vaity, Joint Secretary, Burroughs Welcome Staff and Workers Union, Mumbai 400 025, (4) Shri N. K. Nakhwa, Advisor, Negotiating Committee, Burroughs Welcome Staff and Workers Union, Mumbai 400 025.—*Applicants*—*Versus*—(1) Bhartiya Kamgar Karmachari Mahasangh, 5, Navalkar Lane, Dr. Mane Sabhagraha, Prarthana Samaj, Mumbai 400 004, (2) Shri Shashikant Hadkar, Vice President Bhartiya Kamgar Karmachari Mahasangh, Mumbai 400 004, (3) Shri V. B. Potdar, Presiding Officer, Vth Labour Court, Mumbai-400 034.—*Respondents.*

In the matter of Revision application under Sec. 43 and 44 of the M.R.T.U. and P.U.L.P. Act, 1971.

Present.—Shri P. P. Patil, Member, Industrial Court, Mumbai.

Appearances.—Mrs. N. R. Patankar, Advocate for Burroughs Welcome (I) Limited.

Mr. R. S. Pai, Advocate for Burroughs Welcome Staff and Workers Union.

Mr. V. T. Mirajkar, Advocate for Bhartiya Kamgar Karmachari Mahasangh.

Judgement And Order

(Dated the 21st July 2003)

1. Revision Application (ULP) No. 39 of 1993 and Misc. Criminal Revision (ULP) No. 4 of 1993 are filed by the Applicants separately, challenging the order of issue of process dated 13th July 1993 in criminal complaint (ULP) No. 78 of 1993 and the entire proceedings of the said complaint. Therefore, both these revisions are being disposed by this common order.

2. The facts in brief of the revisions are as follows :—

Misc. Criminal Complaint (ULP) No. 78 of 1993 was filed by the Bhartiya Kamgar Karmachari Mahasangh before Vth Labour Court, Mumbai, who is the non Applicant No. 1 and the Applicants were the Respondents in the said complaint. The non Applicant No. 1 Union had filed criminal Complaint (ULP) No. 78/1993 before the Labour Court Mumbai under Secs. 38, 39, 40 read with Sec. 48 of the M.R.T.U. and P.U.L.P. Act, 1971, wherein the relief was claimed to punish the non Applicants according to law for disobedience of the Court's order.

3. The Learned Labour Judge was pleased to pass an order dated 13th July 1993 an Exh. U-1 in criminal Complaint (ULP) No. 78 of 1993 of issue of process against the Applicants (original Accused in the criminal complaint). On satisfaction of the allegations made in the complaint against them relating to disobedience of the order dated the 22nd December 1987 passed in Complaint (ULP) No. 1074 of 1987 by the Industrial Court, Mumbai. The grievances of the Applicants in both the revisions are that the Criminal Complaint (ULP) No. 78 of 1993 itself is not maintainable and ultimately the order of issue of process passed in the said case on 13th July 1993 is illegal, therefore, liable to be quashed and set aside. The Applicants have denied the allegations of disobedience of the orders dated the 22nd December 1987. According to the Applicants, the order dated the 22nd December 1987 passed in Complaint (ULP) No. 1074 of 1987 was challenged before the Hon'ble High Court in Writ Petition No. 442 of 1988, and in this Writ Petition, the Hon'ble High Court was pleased to pass order on 2nd March 1988 as reproduced below :—

> "The Petitioner union is permitted to negotiate and/or settle demands, disputes etc. on behalf of its members with the Respondent No. 2 company. The settlement, if arrived at, will be binding only upon the members of the Petitioner union."

The order dated the 22nd December 1987 passed in Complaint (ULP) No. 1074 of 1987 was challenged by the employer Borroughs Welcome India Limited, who is the Applicant in Revision Application (ULP) No. 4 of 1993, was challenged in Writ Petition No. 444 of 1988, and the Hon'ble High Court was pleased to pass order on 3rd March 1988, which is reproduced below :—

> "The Respondent No. 3 union is permitted to negotiate and/or settle the disputes/ demands etc. on behalf of its members with the Petitioner Company. Settlement, if arrived at, will be binding only upon the members of the Respondent No. 3 union."

It is the stand taken by the Applicants that in view of the orders of the Hon'ble High Court referred above, they have not disobeyed the order of the Industrial Court dated the 22nd December 1987 passed in Complaint (ULP) No. 1074 of 1987 and this aspect has not been taken into consideration by the Learned Labour Judge and erred in law while passing the order of issue of process in Criminal Complaint (ULP) No. 78 of 1993, on 13th July 1993. The grievance is also raised by the Applicants while assailing the order dated the 13th July 1993 that when the said criminal complaint itself is not maintainable such order should not have been passed by the Labour Court, Mumbai. In short, according to the Applicants, the Learned Labour Judge without application of his mind passed the impugned order dated the 13th July 1993, therefore, it is liable to be quashed and set aside and further in view of the orders passed by the Hon'ble High Court in Writ Petitions No. 442 of 1988 and 444 of 1988, the proceedings *i.e.* Criminal Complaint (ULP) No. 78 of 1993 be dismissed.

4. Heard the Learned Advocates for the Petitioners and the Respondents to the revisions.

5. The following points arise for my determination :—

Points	*Findings*
(1) Whether the Petitioners have proved that the order dated the 13th July 1993 passed in Criminal Complaint (ULP) No. 78 of 1993 is illegal and perverse, therefore, liable to be quashed and set aside ?	Yes.
(2) Whether the Petitioners have proved that Cri. Complaint (ULP) No. 78 of 1993 itself is not maintainable, therefore, liable to be dismissed in view of the Orders dated the 2nd March 1988 and 3rd March1988 passed in Writ Petitions Nos. 442/1988 and 443/1988 respectively ?	In view of the order passed on 14th February 2003 on Exh. U-1 in Cri. Complaint (ULP) No. 78 of 1993 *i.e.* (complaint is dismissed) in default by Vth Labour Court, Mumbai, this issue does not survive.
(3) What order ?	Revisions are allowed.

REASONS

6. At the outset, there is no dispute that the order passed on 22nd December 1987 in Complaint (ULP) No. 1074 of 1987 restraining the employers Borroughs Welcome India Limited, Mumbai, from negotiating or settling the demands, dispute etc. of the members of the Union Maharashtra Shramik Sena, Mumbai (specially those 462 workmen, who have signed the applications filed at Exh. U-8) with the Respondent No. 2 Union, *viz.* Borroughs Welcome Staff and Workers Union. This order was challenged by the employer Borroughs Welcome India Limited and the Union-Borroughs Welcome Staff and Workers Union in Writ Petition Nos. 442 of 1988 and 444 of 1988 respectively before the Hon'ble High Court, Mumbai, in which the Hon'ble High Court was pleased to pass orders, which are reproduced below :—

Order in Writ Petition No. 442 of 1988.— " The Petitioner union is permitted to negotiate and/or settle demands, dispute etc. on behalf of its members with the Respondent No. 2 company. The settlement, if arrived at, will be binding only upon the members of the Petitioner union."

Order in Writ Petition No. 444 of 1988.— " The Respondent No. 3 union is permitted to negotiate and/or settle the dispute, demands, etc. on behalf of its members with the petitioner company. Settlement, if arrived at, will be binding only upon the members of the Respondent No. 3 union."

In view of these orders, the say of the Petitioners is that they have not committed any contempt of Court or there was no disobedience of the order dated the 22nd December 1987 passed in Complaint (ULP) No. 1074 of 1987 on their part, therefore, the Criminal Complaint (ULP) No. 78 of 1993 itself is not maintainable. The Petitioners are seriously challenging the order of issue of process dated the 13th July 1993 passed on Exh. U-1 in Cri. Complaint (ULP) No. 78 of 1993 by Vth Labour Court, Mumbai, on the ground that the said order came to be passed without application of mind.

7. The impugned order is seriously challenged by the Petitioners in view of provisions or Sec. 39 of the M.R.T.U. and P.U.L.P. Act, which contemplates :—

"No Labour Court shall take cognizance of any offence, except on a complaint of acts constituting such offence made by the person affected thereby or a recognised Union or on report in writing of the Investigating Officer."

In support of their contention. The Learned Advocate for the Petitioner has placed on reliance on the case of M. R. Patil *V/s.* Member, Industrial Court and another reported in *1997 I CLR 891 Bombay,* wherein it is held that—

"Prosecution launched against the Appellant is liable to be quashed for the simple reason that the cognizance of the offence under Sec. 48(1) of the Act allegedly committed by the Appellant was taken by the Labour Court in Utter breach of Sec. 39 of the Act, under which cognizance of offence can be taken on the complaint by person affected or a recognised union or on report in writing by the Investigating Officer."

In short, according to the Petitioners, the Respondent No. 1 Union, Bhartiya Kamgar Karmachari Mahasangh is not recognised union and the persons allegedly to be affected not coming forward with the grievance of disobedience of the impugned orders by the Petitioner, therefore, the Learned Labour Judge should not have taken cognizance of an offence alleged in the Criminal Complaint.

8. It is pertinent to note that the issue of process is interlocutory order, therefore, the revision against such orders cannot be maintainable, unless the Petitioners show that their rights and interest are prejudicially affected. In the instant revision, the Petitioners have succeeded in establishing that their rights and interest affected by the said impugned order therefore, it being an interlocutory order, the revisions cannot be disposed of on technical ground. The learned Advocate for the Petitioners has submitted that the impugned order is challenged at a considerable lapse of time, therefore, the Complainant in the Criminal Complaint (ULP) No. 78 of 1993 not acted *bonafide* and only with an intention to harass the Petitioners, at belated stage, the said criminal proceeding is launched.

9. The learned Advocate for the Respondents has submitted that the Criminal Complaint (ULP) No. 78 of 1993 came to be dismissed by order dated the 14th February 2003 passed on Exh. U-1 in the said complaint by the Learned Labour Judge of Vth Labour Court, Mumbai, therefore, now nothing remains. I find substance in the submission made by the learned Advocate for the Respondents that when the Criminal Complaint (ULP) No. 78 of 1993 is disposed of by order dated the 14th February 2003, there is no scope for making grievance of either of parties. Apart from this situation subsequently accurred in Criminal Complaint (ULP) No. 78 of 1993 by order dated the 14th February 2003 dismissing the said complaints in default I find no substance in the grievance of the Applicants regarding disobedience of the order dated the 22nd December 1987 passed by the Industrial Court, Mumbai, in Complaint (ULP) No. 1074 of 1987, in view of the orders passed in Writ Petitions Nos. 442 of 1988 and 444 of 1988 dated the 2nd March 1988 and 3rd March 1988 respectively. Having been taken the facts and circumstances of both the revisions, the following order would meet the ends of justice.

Order

(1) Criminal Revision (ULP) No. 4 of 1993 and Revision Application (ULP) No. 39 of 1993 are hereby partly allowed.

(2) The order of issue of process dated the 13th July 1993 passed in Criminal Complaint (ULP) No. 78 of 1993 is hereby quashed and set aside.

(3) Criminal Complaint (ULP) No. 78 of 1993, by order dated the 14th February 2003 on Exh. U-1 passed by the Labour Court, Mumbai, is dismissed, therefore, no order to that effect required to be passed in the revisions.

(4) No order as to costs.

P. P. PATIL,
Member,
Industrial Court, Mumbai.

Mumbai,
dated the 21st July 2003.

K. G. SATHE,
Registrar,
Industrial Court, Mumbai,
dated the 29th July 2003.

IN THE INDUSTRIAL COURT, AT MUMBAI

COMPLAINT (ULP) No. 151 OF 1996.—Maharashtra Engineering Plastic and General Kamgar Union, Mishra Niwas, Kokani Pada, Kurar Village, Malad East, Mumbai 400 097.—*Complainant*—*Versus*—(1) M/s. Fire Equipment Corporation, 6, Interlink Industrial Estate, Caves Road, Jogeshwari East, Mumbai 400 060. (2) Fire Equipments (Bombay) Pvt. Ltd., 6, Interlink Industrial Estate, Caves Road, Jogeshwari East, Mumbai 400 060. (3) Shri Shirish M. Sanghvi, C/o. Fire Equipment Corporation, and Fire Equipments (Bombay) Pvt. Ltd., 6, Interlink Industrial Estate, Caves Road, Jogeshwari East, Mumbai 400 060.—*Respondents.*

In the matter of complaint of unfair labour practices under items 5 and 9 of Sch. IV of the M.R.T.U. and P.U.L.P. Act, 1971.

Present.—Shri P. P. Patil, Member, Industrial Court, Mumbai.

Appearances.—Shri R. R. Mishra, for the Complainant Union.

Shri N. M. Makandar, Advocate for the Respondents.

Judgement And Order

(Dated the 28th July 2003)

1. This is a complaint under items 5 and 9 of Sch. IV of the M.R.T.U. and P.U.L.P. Act, 1971. The Complainant union is claiming that the Respondents are engaging in unfair labour practices covered under items 5 and 9 of Sch. IV of the M.R.T.U. and P.U.L.P. Act, by showing favour to one group of workmens regardless of merits and not paying the wages as per the Minimum Wages Act applicable to the powerloom industry as well as changing the service conditions without giving any notices.

2. The facts in brief of the complaint are as follows :—

The Complainant is a trade union registered under the Trade Unions Act, 1926 and representing the employees in majority employed by the Respondent company. The Respondents are not paying minimum wages applicable to powerloom industry and indulging in gross discrimination and favouritism to one set of workers regardless of merits. The Respondents have employed 17 employees, excluding the office staff. The respondents have indulged in the business of manufacturing synthetic and cotton hose pipes. The Respondents have get very good market and having sound financial position.

3. The workmen mentioned in the complaint are working with the Respondents since more than 10 years, but getting wages below the minimum rates of wages. The workmen are entitled to the minimum wages as per the notification issued by the Government of Maharashtra from time to time applicable to the powerloom industry. To receive wages is a statutory right being terms of contract of employment and non implementation of the said wages amounts to unfair labour practice covered under item 9 of Sch. IV of the M.R.T.U. and P.U.L.P. Act. Excluding the workmen mentioned in the complaint, other employees who are working in the same category getting higher wages than the minimum wages applicable to the powerloom industry and by this way the Respondent company is showing favouritism to them. This act on the part of the Respondents is covered under item 5 of Sch. IV of the M.R.T.U. and P.U.L.P. Act. Therefore, the Complainant union is claiming declaration against the Respondents for engaging in unfair labour practices covered under items 5 and 9 of Sch. IV of the M.R.T.U. and P.U.L.P. Act, and directions to the Respondents to pay minimum wages applicable to the powerloom industry as per the notification issued by the Government of Maharashtra from time to time. The reliefs towards difference of wages and prohibitory order restraining the Respondents from terminating services of the concerned workmen also claimed in the complaint.

4. The Respondents are strongly resisting the claim of the Complainant union on the grounds stated in the written statement Exh. C-2. The Respondents are also requesting to treat the affidavits dated the 19th February 1996 and 24th June 1996 filed by the Respondent No. 3 in reply to the interim relief application filed by the Complainant union. The Respondents have raised objection for joining the Respondent No. 1 company as party to the present complaint, in view of taking over by the Private Limited Company *i.e.* Respondent No. 2 and thus the name of the Respondent No. 1 company should be deleted from the present proceedings. The complaint

is barred by limitation as per the alleged date of commission of unfair labour practices claimed from 2nd September 1995. The Respondent company has further stated about recovery application under the Minimum Wages Act filed before the Minimum Wages Authority (Judge, First Labour Court, Mumbai) in which identical claim is for payment of minimum wages applicable to the powerloom industry as per the notification issued by the Government of Maharashtra from time to time. It is merely a small scale industry hardly engaged 25 workmen. The Respondent company engaged in the business of manufacturing of fire fighters and industrial hose pipe supplying to the industrial customers and fire brigade. The Respondent company has obtained certificate from the competent authority to show that it covers in the list of small scale industries. The Respondent company is not manufacturing any textile products, therefore, is not a powerloom industry. The workmen are paid wages as per the terms of the settlement dated 27th December 1981, therefore, the Complainant union cannot claim minimum wages applicable to the powerloom industry. The workmen who were on strike for 11 years, therefore, their skills became rusted and not fit to continue in the semi skilled category and able to do work in only the category of unskilled. It is denied by the Respondents that any threat is given for termination of services of the concerned workmen mentioned in the complaint.

5. It is contended by the Respondents that the First Labour Court, Mumbai in Application (MWA) No. 05 of 1995 filed by the concerned workmen under which the claim was for getting minimum wages applicable to the powerloom industry has been rejected and held that the Respondent company is not a powerloom industry by its order dated 17th February 1997. It is further contended by the Respondents about visit of the Inspector under the Minimum Wages Act to the Respondent company and during his inspection has classified that the Respondent company is a residuary industry for which separate minimum wages notification was issued and applicable, therefore, the workmen in the Respondent Company were entitled to the minimum wages payable to the residuary industry. According to the Respondent company, the Hon'ble High Court Single Bench by order dated 5th May 1997 and the Division Bench order dated 21st July 1997 directed to pay wages equivalent to the wages paid to similarly placed workmen. Accordingly, payment was made without prejudice to the rights of the Respondent company.

6. It is contended by the Respondent company that the concerned workmen were on strike for 11 years and they cannot be compared with other workmen who have put in 11 years of service. The Respondent company has further stated in their written statement that out of 5 workmen mentioned in the complaint, Eknath R. Kadam (workmen) has not reported for work till the date since he went on strike from 9th October 1983. It is denied by the Respondents about allegation of indulging in unfair labour practices covered under items 5 and 9 of Sch. IV of the M.R.T.U. and P.U.L.P. Act.

7. On the basis of the pleadings, the learned Predecessor was pleased to frame following issues to which I have noted my findings as under :—

Issues.—	*Findings.*—
(1) Whether the Complainant has proved that the Respondents have committed unfair labour practices under items 5 and 9 of Schedule IV of the M.R.T.U. and P.U.L.P. Act, 1971 ?	Yes.
(2) Whether the Complainant union is entitled to get any relief as prayed for in the main complaint ?	Yes.
(3) What order ?	Complaint is allowed.

Reasons

8. In view of the objections raised by the Respondents, it becomes necessary to take into consideration the said objections before touching to the merits of the complaint. The first objection is of misjoinder of necessary party in view of the fact that the Respondent No. 2 company is taken over by the Respondent No. 1 company, therefore, claiming that the Respondent No. 1 company should not have been joined as necessary party to the present complaint. Except

such bare word or the fact stated in the written statement, the Respondents have failed to produce any document as well as no oral evidence is led on this issue. The Respondents seems to be not serious on this point and that may be the reason of giving no evidence to substantiate such allegation. The second legal objection raised by the Respondents is about limitation. According to the Respondents, the present complaint is barred by limitation as the cause of action arose on 2nd September 1995. But on this issue also, the Respondents are not serious and failed to give evidence. In absence of such evidence, the Respondents have failed to prove the legal objections raised above. It is pertinent to note that even in the written notes of arguments as well as oral arguments advanced by the learned Advocate for the Respondents, there was no reference of the said legal objections. I find no substance in the said objections raised by the Respondents relating to misjoinder of party and limitation.

9. Undisputedly, the workmen were on strike in the first phase from 9th October 1983 to 10th March 1986 *i. e.* for 29 months. But the second phase strike, as alleged by the Respondents from 10th March, 1986 to August, 1994 *i.e.* for about 8 years, is in dispute. The Complainant union is claiming relief for minimum wages as per the Minimum Wages Act applicable to the powerloom industry and there should not be any discrimination while extending the benefit of wages to the workmen, who are doing identical work. The grievance is also made by the Complainant union for change in the service conditions and the nature of work of the workmen mentioned in the complaint without giving any notice under Sec. 9-A of the Industrial Disputes Act. Looking to the controversy involved in the complaint, it becomes necessary to determine as to whether the Respondent company is a powerloom industry therefore, the notification issued by the Government of Maharashtra for powerloom industry is applicable and accordingly, the Respondent company is liable to pay minimum wages under the Minimum Wages Act for powerloom industry. According to the Respondent company, they are paying wages as per the Minimum Wages Act applicable to the residuary industry and as per the settlement dated 17th December 1981. The Respondent company is running 2 units, one at Jogeshwari and other at Andheri. According to the Respondent company, it is a small scale industry as per the certificate Exh. C-19 dated 19th July 1991 issued by the Directorate of Industries, Government of Maharashtra and the certificate Exh. C-20 dated 30th June 1993 issued by the National Small Scale Industries Corporation (Government of India Undertaking). But the Respondent company has come with the stand that their company is governed by the terms of the Government Notification No. MWA 6690/7070/Lab-7, dated 6th December 1996. Accordingly, they have paid difference in wages to the concerned workmen, with effect from 6th December 1996. Further, say of the Respondent company is that prior to the said Government Notification dated 6th December 1996, they were paying wages as per the terms incorporated in the settlement dated 17th December 1981 Exh. C-12.

10. The concerned workmen through the present Complainant union had filed Application (MWA) No. 5 of 1995 before the authority appointed under the Minimum Wages Act, 1948 (Judge, First Labour Court, Mumbai) under which it had claimed wages applicable to the powerloom industry fixed by the Government of Maharashtra from time to time. The said authority under the Minimum Wages Act has observed in its order dated 17th February 1997 that the Respondent company is not a cloth manufacturing company but it is a hose manufacturing company and nozzle is fitted with iron parts at both ends, therefore, comparison cannot be made with the textile unit and a hose manufacturing unit. Further, the learned authority has observed in the said order that the Complainant union was claiming wages applicable to the powerloom industry with retrospective effect, but the claim was denied on the ground that it being a penal legislation cannot consider the demand of the union with retrospective effect. The learned authority while parting with the Application (MWA) No. 5 of 1995 concluded that making of hose pipes is not a textile or powerloom industry, therefore, cannot be treated as textile or powerloom industry. On the basis of the order dated 17th February 1997 passed by the learned authority under the Minimum Wages Act in Application (MWA) No. 5 of 1995, the Respondent company is claiming that the same dispute assign cannot be raised for decision when the competent authority has already decided the same finally.

11. The learned Advocate for the Complainant union has strenuously argued on the point of change in the nature of duties (nature of work) of the workmen mentioned in the complaint without giving any notice of change under Sec. 9-A of the Industrial Disputes Act. The learned representative for the Complainant union to substantiate his arguments has taken the help of the settlement dated 17th December 1981 Exh. C-12 and the Annexure A, B and C attached to it. During the course of the arguments the learned representative for the Complainant union has pointed out that the names of the concerned workmen *viz* Anant Sitaram, Rajaram Sakharam and Jagannath Sakharam who are placed at Sr. Nos. 3, 12 and 17 in Annexure-A attached to said settlement Exh. C-12, and their designation is shown as Operaters in the column of 'nature of work'. The names of the said workmen are mentioned in sub para (c) of para 3 of the complaint. Thus, it is clear on the basis of the said document that the workmen referred to above were doing the work as Operators. The Complainant union has examined its witness Mr. Dhokare, who has stated on oath that the workmen working with the Respondent company in two categories only *i. e.* Operators and Helpers. He alongwith other workmen mentioned in the complaint were working as Operators. This witness has made it clear in his evidence that the workman Eknath Kadam who is at Sr. No. 5 in the list of workmen mentioned in sub para (c) of para 3 of the complaint not in services of the Respondent company who never reported for work. During the course of arguments, the learned representative for the Complainant Union has fairly conceded that the said workman Eknath Kadam being not in the employment of the Respondent Company, the Union is not pressing any relief for the said workmen in the present complaint. Therefore, the grievance now remains only to the extent of 4 workmen, out of which the workmen placed at Sr. Nos. 1 to 3 in sub para (c) of para 3 of the complaint are shown, as Operators in the column left for the nature of work in the settlement dated 17th December 1981 Exh. C-12. The Respondent company has examined its witness Mr. Sanghvi, who has stated that their company comes under the small scale industry and as per the report of the Inspector under the Minimum Wages Act dated 21st April 1997 it is a residuary industry as not manufacturing of any type of textile or powerloom product. The witness Sanghvi has also stated in respect of the Certificate Exh.C-19 issued by the Directorate of Industries, Government of Maharashtra and the certificate Exh. C-20 obtained from the National Small Scale Industries Corporation Limited (Government of India Undertaking). It has come in the evidence of Mr. Sanghvi that the workman Eknath Kadam never reported for work till today. The material statement is made by this witness Sanghvi that they are paying wages to the workmen on the basis of the wages for residuary industry and prior to that, they were paying wages as per the settlement dated 17th December 1981 Exh. C-12. The witness Sanghvi has admitted that there are only two categories of workmen engaged by them *i.e.* Operators and Helpers, and running two units, one at Andheri and other at Jogeshwari. The witness Sanghvi has admitted that the workmen *viz.* Rajaram Sakharam; Jagannath Sakharam; Maruti Hari and Bapu Hari who are at Sr. Nos. 2, 4, 12 and 17 in Annexure-A attached to the settlement Exh. C-12 shows as Operators and the word 'operators' is written against the names of the workmen who were working as Operators. It has come in the evidence of Sanghvi that some of the employees were allowed to join their duties as per their designation after withdrawal of the strike *i.e.* on 13th August 1994 and paying them wages equal to their wages at the time of closure.

12. For comparison of the wages paid to the workmen joined on 13th August 1994 after withdrawal of the strike and the workmen mentioned in sub para (c) of para 3 of the complaint are getting wages, the chart is placed on record by the Complainant union which was referred to the witness Sanghvi, who has admitted that the workmen referred in sub para (c) of para 3 of the complaint were the machine operators, but now shown in the chart as unskilled workmen without their consent. The same chart is referred to the witness Sanghvi speaks about the wages getting by the workmen mentioned in sub para (c) of para 3 of the complaint much lesser than the wages getting by the junior workmen, or even comparing to the wages received by the unskilled workmen.

13. In view of subsequent development by way of appointment of the Investigating Officer and the challenge to his report by the Respondent company, the request for re-examination of the witness on behalf of the Respondent company was allowed and accordingly the said witness Sanghvi is re-examined. The reason of re-examination of the said witness of the Respondent company no doubt was the challenge to the report of the Investigating Officer and to bring on record the activities carried out by the Respondent company. The witness Sanghvi has stated that the Respondent company manufactures fire hose pipes with the help of feto machine and after nozzles and cufflings brought from the market are fitted to the flexible hose pipes in their unit at Andheri. According to the Respondent the hose pipes are mainly used in the fire brigade department and rubbering work to the hose pipes are done at the said factory. The Respondent company is trying to bring on record the nature of activities being performed by them in their unit and looking to such activities, the Respondent company cannot be included in the category of powerloom industry. During the course of arguments, the learned representative for the Complainant union fairly concedes that they are not pressing the claim regarding payment of wages applicable to the powerloom industry as per the Government Notification issued from time to time. Even on the basis of the evidence, documentary and oral available on record, the Respondent company succeeded in establishing that they are liable for payment of wages as per the Minimum Wages Act applicable to the residuary industry in accordance with the term of notification issued by the Government of Maharashtra from time to time.

14. The Respondent company has examined its witnesses *viz.* Jack Fernandes, Shivaji Elve, Maruti Hari Jodhale, Shantaram Atmaram Baing and Rajan Surve through whom brought on record about visit of Investigating Officer to the units of the Respondents and the activities being performed in both the units. The witness Jack Fernandes has admitted in his cross-examination the fact that the workmen Anant Sitaram; Rajaram Sakharam and Jagannath Sakharam and Bhau Govind are working on the machine. This witness has further stated that the said employees were also performing the duties on machine as machine operators. Thus, it is clear on the basis of the oral evidence of the witness referred above examined by the Respondents, the Complainant union has established that Anant Sitaram; Rajaram Sakharam; Jagannath Sakharam and Bhau Tendulkar were working as the machine operators, but their nature of work and designation is changed by the Respondent company when they joined their duty after the strike was withdrawn. Presently, these 4 workmen are allowed to work as helpers and getting wages applicable to the said post. Therefore, the grievance of the Complainant union is that without giving notice of change as per the provisions of Sec. 9-A of the Industrial Dispute Act, the nature of work and designation of the concerned workmen have been changed, which amounts to unfair labour practice covered under item 9 of Schedule-IV of the M.R.T.U. and P.U.L.P. Act, 1971.

15. The learned Advocate for the Respondent company has invited attention of this Court to the proceedings in Reference (IT) No. 65 of 1999 pending before the Industrial Tribunal, Mumbai under the Industrial Dispute Act for classification of the workmen and their scales of wages, therefore, instead of deciding the claim made in the present complaint, it would be just and proper to left such claim for decision in the Reference (IT) No. 65 of 1999. Further, the learned Advocate for the Respondents, during course of his arguments, invited attention of this Court to item 9 of Sch. V of Industrial Dispute Act, which relates to "favouritism or partiality to one set of workers, regardless of merits". Attempt is being made by the learned Advocate for the Respondents by showing this provision that when the reference is pending for adjudication of unfair labour practices on the part of the employer *i.e.* "favouritism or partiality to one set of workers regardless of merits" having wider scope, it is needless to decide such controversy involved in the present complaint under the M.R.T.U. and P.U.L.P. Act. It is pertinent to note that in the instant case there is no question of fixing grade or classifying the concerned workmen because they were working as Operators and claiming the original post. In the same way, the wages as per the minimum wages Act for the residuary industry is paying the Respondents to their workmen. In short, the concerned workmen are requesting to give them their original post or status as Operators and pay wages applicable to the said post as per the Minimum Wages Act applicable to the residuary industry, which is a reasonable and just demand of the Complainant union.

16. The learned Advocate for the Respondents during the course of his arguments, made submission that as to how the concerned workmen cannot be accommodated on the original posts (Operators) as they are surplus because the appointment in their place has already been made and they are working as Operators since about 11 years. Further, the learned Advocate for the Respondents has pointed out that there are only 4 machines and one twisting (Doubling) machine with the Respondent company therefore, only 4 Operators can be accommodated and the

said posts have already been occupied by new appointment made after the strike was withdrawn, as the concerned workmen as mentioned in sub-para (c) of para 3 of the complaint did not join their duty after the strike was withdrawn. The gist of the argument of the learned Advocate for the Respondents was that an employer cannot wait for employees for 11 years to resume their duty or the employer cannot close down his industry after considerable investment is made, therefore, was having no other alternative but to make appointments of operators and under such circumstances, the claim of the concerned workmen through whom the present complaint is filed by the Complainant union needs to be ignored. When fresh recruitment was made by the Respondent company and without considering legitimate claim of the concerned workmen, it is the responsibility of the Respondents to resolve the difficulties and set right the claim of the concerned workmen. Merely because they have engaged or recruited fresh workmen to run their industry, that does not mean that the right of the concerned workmen can be taken away. The representative of the Complainant Union has convessed that the Concerned workmen all they while were interested to join their duties and accordingly several times they reported the company for work, but they were not allowed to resume their duty, therefore, they are not at fault. Further he has pointed out with the help of chart filed alongwith the list Exh. C-19 that as to how the Respondent company is discriminating the concerned workmen by paying more wages to the junior workmen even to the workmen who are presently working in the category of helpers.

17. The learned Advocate for the Respondent company has submitted that the Complainant union must prove discrimination regardless or merits for bringing unfair labour practices on the part of the Respondents under item 5 of Sch. IV of the M.R.T.U. and P.U.L.P. Act. In support of his submission, he has placed reliance on the case of Bhartiya Kamgar Sena *V/s.* Consolidated Pneumatic Tool Company (India) Limited and others, reported in *1990 I CLR 112 Bombay* wherein held that—

> "Maharashtra Recognitions of Trade Unions and Prevention of Unfair Labour Practice Act, 1971-Item 5 of Sch. IV-Difference in wages and pay packet in respect of employees recruited prior to 1st July, 1983 and those recruited after 1st July, 1983-Pay scale agreed in the settlement with recognised union-whether discrimination attracts item 5 of Sch. IV-Item 5 of Sch. IV is not attracted and the complaint itself is not maintainable."

Further, the learned Advocate for the Respondents has placed reliance on the case of State of Hariyana *V/s.* Ram Kumar Man, reported in *1997 I CLR 929 SC,* wherein held in para 3 that—

> "As stated earlier, his right must be founded upon enforceable right to entitle him to the equality treatment for enforcement thereof. A wrong decision by the Government does not give a right to enforce the wrong order and claim parity or equality. Two wrongs can never made a right. Under those circumstances, the High Court was clearly wrong in directing reinstatement of the Respondent by a mandamus with all consequential benefits."

The facts of the above referred cases are not identical with the present complaint. The concerned workmen have enforceable right to entitle to the equality term and they cannot be discriminated because they joined their duties late after withdrawl of the strike. No correspondence is made by the Respondent company calling upon the concerned workmen to join their duty otherwise appropriate action would be taken against them. On the contrary, the Respondent company allowed them to join their duty after lapse of 11 years from the date of withdrawal of strike, that itself shows that the concerned workmen were neither retrenched, not their services were terminated by the Respondent company, therefore, presume to be continued in the employment and ultimately entitled to resume their duty on their respective post originally held by them. The learned Advocate for the Respondents has submitted that the workmen who have already been engaged to perform duties as Operators after the strike was withdrawn either they have to remove from the job of operators of the workmen who are represented by the present union asked to work in another category. In short, according to the Respondents, they have not treated the concerned workmen discriminately while accommodating them in services and paying the wages. The learned Advocate for the Respondents has placed reliance on the case of D. S. Nakara and others *V/s.* Union of India and others, reported in *AIR 1983 SC 130,* wherein held in para 32 that—

> "Persons holding identical posts may not be treated differently in the matter of their pay merely because they belong to different department. If that cannot be done when they are in service, can that be done during their retirement? Expanding this principle one can confidently say that if pensioners form a class, their computation cannot be by different formula affording unequal treatment solely on the ground that some retired earlier and some retired later."

It is pertinent to note that considering the ratio laid down in the above referred case, the Respondent company cannot discriminate the concerned workmen on the ground that they joined their duty after a lapsed of certain period. Further, the learned Advocate for the Respondents has placed reliance on the case of Mumbai Mazdoor Sabha *V/s.* Bombay Dyeing and Mfg. Company Ltd. and others reported in *1982 LAB IC 1533 Bombay,* wherein held; in para 11 that—

> "Commission of unfair labour practices carries with it certain punishments. Thus, the provisions of the Act are to some extent penal in nature and, therefore the said penal provisions will have to be construed strictly in conformity with the specific language used by the legislature itself."

The learned Advocate for the Respondents has also placed reliance on the case of M/s. Billion Plastics Pvt. Ltd. *V/s.* Dyes and Chemical Workers Union and others reported in *1983 FLR 98,* wherein held; in para 4 that—

> " It is quite obvious that indulging in unfair labour practice is looked upon by the enactment very seriously and it results in penal consequences. Therefore, such provision should be construed strictly. There cannot be a dispute that the unfair labour practice if proved as per provisions laid down in law, it results in a penal consequences, therefore, the provisions under the law should be construed strictly."

In the light of the ratio laid down in the above referred cases and looking to the unfair labour practices claimed, the Complainant union has discharges burden completely and succeeded in establishing that without giving notice of change, the nature of duties and the designation of the concerned workmen for which the present complaint is filed, have been changed. The Respondents engaged in unfair labour practices covered under item 5 of Sch. IV of the M.R.T.U. and P.U.L.P. Act by showing favour to the set of some workmen regardless of merits while paying wages. The concerned workmen have right to work on their original post of Operators when they joined their duty after considerable lapse of time, and entitled to the wages equally paid to other workmen working in the same category. Not paying to the concerned workmen as per their original post and by changing their duty and designation without giving them notice of change, certainly this action on the part of the Respondents is in violation of the service conditions which amounts to unfair labour practice covered under Item 9 of Schedule-IV of the M.R.T.U. and P.U.L.P. Act. In this view of the matter, I find substance in the grievances of the Complainant union, therefore, in the result the present complaint deserves to be allowed as per the order passed below :—

Order

(1) Complaint (ULP) No. 151 of 1996 is allowed.

(2) It is hereby declared that the Respondents have engaged in unfair labour practices covered under items 5 and 9 of Sch. IV of the M.R.T.U. and P.U.L.P. Act, 1971.

(3) The Respondents shall cease and desist from engaging in such unfair labour practices.

(4) The Respondents are directed to allow the concerned workmen for when the Complainant union has filed the present complaint, to work as Operators and pay wages as per the provisions of the Minimum Wages Act applicable to the residuary industry from the date of this order.

(5) No order as to costs.

P. P. PATIL,
Member,
Industrial Court, Mumbai.

Mumbai,
Dated the 28th July 2003.

K. G. SATHE,
Registrar,
Industrial Court, Mumbai.
Dated the 2nd August 2003.

IN THE INDUSTRIAL COURT AT MUMBAI

COMPLAINT (ULP) No. 720 OF 1991.—Engineering and Metal Workers Union, (AITCU), Ghanshyam Patil Building, S. V. Road, Andheri West, Mumbai 58.—*Complainant—Versus*— (1) M/s. Candy Filters (India) Limited, Mahalaxmi Chambers, 7th floor, Bhulabhai Desai Road, Mumbai-26, (2) Shri Sushil Morarka, Director, Morarka House, BML Dahanukar Road, Near Jaslok Hospital, Mumbai 400 026, (3) Shramik Utkarsha Sabha, 3/141, MHB, Kher Nagar, Bandra East, Mumbai 400 051.—*Respondents.*

In the matter of complaint of unfair labour practices under item 9 of Sch. IV of the M.R.T.U. and P.U.L.P. Act, 1971.

Present.—Shri P. P. Patil, Member, Industrial Court, Mumbai.

Appearances.—Mr. P. U. Mokashi for Complainant Union.

No appearance on behalf of the Respondents.

Judgement and Order

(Dated the 24th July 2003)

1. This complaint is under item 9 of Sch. IV of the M.R.T.U. and P.U.L.P. Act, 1971. The Complainant union is claiming that the Respondents are engaging in unfair labour practices by not fully implementing the Award dated 27th February 1989 in Reference (IT) No. 18 of 1988 and the Orders dated 21st August, 1989 and 28th September 1988 in Complaint (ULP) No. 920 of 1989.

2. The facts in brief of the complaint are as follows :—

The Respondent No. 1 company is registered under the Companies Act, 1956 and engaged in various activities pertaining to the water treatment. Respondent No. 2 is the Director of Respondent No. 1 company. The question of legality of lock out was decided by the Industrial Court in Reference (IT) No. 18 of 1988 on 27th February 1989. By the said Award, the Industrial Tribunal was pleased to declare that the lock out was illegal. The Complainant union had filed Complaint (ULP) No. 920 of 1989 before the Industrial Court, Mumbai, under item 9 of Sch. IV of the M.R.T.U. and P.U.L.P. Act, 1971 for non implementation of the said Award dated 27th February 1989. The Respondents have their level best tried to get the Award dated 27th February 1989 and the Orders dated 21st August 1989 and 28th September 1989 in Complaint (ULP) No. 920 of 1989 set aside by the Hon'ble High Court and Apex Court, but they did not succeed in their attempt. Therefore, the Award and the said two orders are executable.

3. The Respondents were called upon to implement the award and the orders but they did not take proper steps to implement the said award and the orders, therefore, the letter dated 22nd April 1989 was served upon them. The Respondents have lifted the lock out with effect from 2nd March 1990 and allowed the workmen to report for work after a gap of 29 months, but the salary for the lock out period has not been paid to the workmen. The voluntary retirement scheme was introduced by the Respondents as per the notice dated 9th March 1990 and dues to precarious condition of the workmen they were forced to accept the said voluntary retirement scheme. The Respondents in this event also have not paid salary for the lock out period to the workmen.

4. The Respondents are intending to dispose of their moveable and immoveable assets with an intention to deprive the workmen from getting their salary for the lock out period. Therefore, it is necessary to restrain the Respondents from disposing of or alienating the assets moveable or immoveable and also directions are necessary to pay wages of the lock out period from 28th September 1987 to 28th February 1990, hence this complaint.

5. The Respondents though served and appeared but they have not filed their written statement. Despite all this, my learned predecessor was pleased to frame the issues *vide* Exh. O-3 on 25th August 2000, which are reproduced below and noted my findings against them :—

ISSUES.—	*FINDINGS.*—
(1) Whether it is proved that the Respondents have willfully refused and avoided to implement an Award passed in Reference (IT) No. 18 of 1988 ?	Yes.

(2)	Whether it is proved that the Respondents have failed to pay salary during the illegal lock out period *i.e.* for 29 months to the concerned workmen ?	Yes.
(3)	Whether it is proved that the Respondents are trying to dispose of their assets with a view to give go by to the Award ?	Does not survive.
(4)	Whether it is proved that the Respondents have committed unfair labour practices as alleged ?	Yes.
(5)	What order ?	Complaint is allowed.

Reasons

6. In Reference (IT) No. 18 of 1980, award was passed on 27th February 1989 declaring the lock out imposed by the management of the Respondent company with effect from 28th September 1987 was illegal and unjustified, therefore, the management should lift the same within a period of one month and also the directions were issued to pay the workmen their full wages from the period of lock out. The Respondents refused, avoided and neglected to implement the said award. After waiting reasonable period for implementation of the said award, a complaint of unfair labour practice (ULP) No. 920 of 1989 was filed by the Complainant union in the Industrial Court, Mumbai, under item 9 of Sch. IV of the M.R.T.U. and P.U.L.P. Act. But to defeat the said complaint, the Respondents has filed Writ Petition No. 2021 of 1989 before the Hon'ble High Court, Bombay, challenging the said award, but the said writ petition was summarily dismissed at the state of admission by order dated 21st July 1989. The Industrial Court had directed the Respondents in the said complaint either to deposit sum of the wages of the lock out period in the Court or to furnish bank guarantee while deciding the interim relief application, but that order was not followed by the Respondents, therefore, the Industrial Court by order dated 29th September 1989 was pleased to direct the Respondents to lift lock out within a period of one month. In the writ petition filed by the Respondents before the Hon'ble High Court, Bombay, bearing No. 2984 of 1989, the said orders of the Industrial Court dated 21st August 1989 and 29th September 1989 were challenged by the Respondents and his Lordship was pleased to summarily reject the said writ petition by order dated 6th November 1989 at the admission stage.

7. The restoration application was filed by the Respondents for setting aside the *ex-parte* award alongwith an application for condonation of delay, however, by order dated 10th November, 1989, the Industrial Court was pleased to dismiss the application for condonation of delay as well as the application for setting aside the *ex-parte* award. These orders were challenged by the Respondents in Writ Petition No. 3522 of 1989 before the Hon'ble High Court, and the said writ petition came to be summarily rejected by order dated 23rd January 1990 against which the L.P.A. No. 407 of 1990 was filed by the Respondents which was also dismissed by the Division Bench of the Hon'ble High Court by order dated 19th April 1990. The Respondent had prefered appeal to the Hon'ble Supreme Court against the Judgment and order of the Division Bench of the Hon'ble Division Bench of the High Court, Bombay dated 19th April 1990 in L.P.A. No. 407 of 1990, number as Special Civil Application No. 8647 of 1990. The Hon'ble Apex Court was pleased to dismiss the said S.L.P. by order dated 6th March 1991 and in this way, the award passed by the Industrial Tribunal in Reference (IT) No. 18 of 1988 dated 27th February 1989 and the orders in Complaint (ULP) No. 920 of 1989 dated 21st August, 1989 and 29th September 1989 are inoperative and binding on the Respondents, but they failed and neglected to implement the said award and the orders, hence engaged in unfair labour practices covered under item 9 of Sch. IV of the M.R.T.U. and P.U.L.P. Act.

8. The Complainant union has examined its witness Mr. Samant, who has stated about the award passed in Reference (IT) No. 19 of 1988 and various writ petitions filed by the Respondents before the Hon'ble High Court, Bombay and appeal before the Hon'ble Apex Court. Also the fact is stated by this witness Samant in respect of lifting of lock out after decision of the Hon'ble Supreme Court, but no payment is made to the employees towards the wages for lock out period, therefore, committed unfair labour practices. Further, the witness Samant has stated in his evidence about receipt of payment of wages from Collector, as the Collector

recovered sum amount in persuance of the Court's order. As per the version of the witness Samant, the amount of wages during the period of lock out due from the Respondents was Rs. 14,61,991.65, but the Collector recovered only Rs. 7 lacs and deposited the said amount in the Court, out of which Rs. 47,000 is still lying in the office of the Industrial Court.

9. From the facts, it is clear that the Respondent company has finally lifted the lock out with effect from 1st March 1990. The Complainant Union is claiming wages of the lock out period Rs. 14,61,991.65. The Complainant union has filed written notes of arguments Exh. U-40 wherein mentioned that the amount of Rs. 7 lacs out of Rs. 14,61,991.65 paid by the Respondents from time to time. Further in the written notes of arguments Exh. U-40 also mentioned by the Complainant union in respect of an amount of Rs. 2,31,163.12 recovered and deposited in this Court by the office of the Collector of Mumbai, put of the total balance of Rs. 7,61,991.65. Thus, according to the Complainant union, the balance amount of Rs. 5,30,828.53 is still to be recovered from the Respondents.

10. The grievance made by the Complainant union is that the Respondents are trying to dispose of their assets with a view to give by the award and the orders therefore, necessary to restrain the Respondents from disposing of movable or immoveable property atleast till pending decision of the complaint. But no final relief is sought by the Complainant union on this issue, therefore, more discussion or comments are not required. There is no evidence from the Complainant union as their witness Samant is silent over the issue of restraining the Respondent company to interfere with or dispose of moveable or immoveable assets, therefore, the Issue No. (3) does not survive.

11. The record shows that the application Exh. C-13 was filed by the Respondents for disposal of the complaint, on which the order was passed by the learned predecessor on 14th June 1999 *vide* Exh. O-3 and thereby rejected the said application of the Respondents. The conduct of the Respondent a company itself sufficient to consider as to how they are reluctant to take part in the proceedings though served disobeying the award and orders of the Court from time to time. The oral evidence of the witness Samant has gone unchallenged as there is no cross-examination of this witness from the Respondents. The case of the Complainant union in the notes of the arguments has stated about balance payment of Rs. 5,30,828.53 remained to be recovered from the Respondent company, out of the total amount of Rs. 14,61,991.65. The Respondent company is bound by the said award and the orders to pay the balance amount of Rs. 5,30,828.53 to the concerned employees. In fact, the Respondent company should have been complied with the award and the orders passed by the Industrial Tribunal and the Industrial Court from time to time, but they failed and neglected to implement the same, therefore, engaged in unfair labour practices covered under item 9 of Sch. IV of the M.R.T.U. and P.U.L.P. Act. In the result, this complaint deserves to be allowed as per the order passed below :—

Order

(*1*) Complaint (ULP) No. 720 of 1991 is allowed.

(*2*) It is declared that the Respondents Nos. 1 and 2 have been engaged and continued to engage in unfair labour practices covered under item 9 of Sch. IV of the M.R.T.U. and P.U.L.P. Act, 1971.

(*3*) The Respondents Nos. 1 and 2 are directed to cease and desist from engaging in said unfair labour practice.

(*4*) The Respondents Nos. 1 and 2 are directed to pay the balance amount of Rs. 5,30,828.53 to the concerned workmen, within a period of 90 days from the date of this order.

(*5*) No order as to costs.

P. P. PATIL,
Member,
Industrial Court, Mumbai.

Mumbai,
Dated the 24th July 2003.

K. G. SATHE,
Registrar,
Industrial Court, Mumbai,
Dated the 5th August 2003.

IN THE INDUSTRIAL COURT AT MUMBAI

COMPLAINT (ULP) No. 1675 OF 1992.—M/s. Jatin Polishers, Kohinoor Industrial Estate, 2nd floor, W. E. Highway, Goregaon (East), Mumbai 400 063.—*Complainant—Versus*—Bombay Suburban Kamgar Sangh, Office No. 5-A, First floor, Hem Villa, Opp. Railway Station, 67, Jawahar Nagar, Above Maharashtra Co-op. Bank Ltd., Goregaon (West), Mumbai 400 062.—*Respondents.*

In the matter of complaint under items 5 and 6 of Sch. III of the M.R.T.U. and P.U.L.P. Act, 1971.

Present.—Shri P. P. Patil, Member, Industrial Court, Mumbai.

Appearances.—Shri Acharekar, Advocate for Complainant.

No appearance on behalf of the Respondent Union.

JUDGEMENT AND ORDER

(Dated the 12th August 2003)

1. This complaint is under items 5 and 6 of Sch. III of the M.R.T.U. and P.U.L.P. Act, 1971.

2. The facts in brief of the complaint are as under :—

The Complainant is a partnership firm having its factory at M/s. Jatin Polishers, Kohinoor Industrial Estate, Goregaon (East), Mumbai, which is engaged in the business of cutting and polishing of diamonds. The Complainant has engaged about 250 workmen in its factory. The Respondent union had submitted charter of demands on 5th December 1991 and the partners of the Complainant and the representatives of the Respondent union held a meeting and arrived at memorandum of settlement on 17th August 1992. As per the terms of said memorandum of settlement, the workman in each department is required to give minimum production mentioned in said settlement, and the workmen who gave the minimum production is entitled to fixed wages. The workmen who failed to give minimum production were entitled to wages only for their respective production as per the rate prescribed. Some of the workmen refused to give minimum production prescribed in the said memorandum of settlement. The Respondent union sent a letter dated 11th November 1992 stating therein that the Complainant engaged in unfair labour practices, which was replied as per the letter dated 15th November 1992. In the meantime, on 15th November 1992 the Respondent union sent a notice to the Complainant proposing strike of the workmen with effect from 2nd December 1992. However, the General Secretary of the Respondent union undertook not to proceed on strike with effect from 2nd December 1992. But, all of a sudden, without any reason, the workmen started sit down strike on 17th December 1992 and refused to do any work. Therefore, the Complainant displayed a notice on the notice board on 18th December 1992 but no cognizance was taken by the workmen of said notice.

3. On 19th December 1992 at about 10-00 a.m. when Shri T. N. Pande, Labour and Administrative Officer of the Complainant entered the factory premises, a group of 50 workmen abstracted his entry and shouted slogans in filthy and abusive language. On the same day *i.e.* on 19th December 1992 Shri Ravi Kumar Iyyer Accountant of the Complainant tried to go to

Bottom 'A' Department at about 2-00 p.m. but he was prevented from going thereby a group of 4 to 5 workmen and abused him in filthy and language. Therefore, Shri Ravi Kumar Iyyer submitted a complaint of said incident. On the same day 19th December 1992 at about 2-00 p.m. Shri Ravi Kumar Iyyer approached Mrs. Swapna Pawar the Table Incharge of Bottom 'A' Department. She was threntened by Shri Anil Goriwale and Kishore Rathod and also prevented her from taking instructions. Mrs. Swapna Pawar lodged a complaint on 19th December 1992 to the Complainant. Copies of the complaints of Pande, Ravikumar Iyyer and Mrs. Swapna Pawar were forwarded to the Commissioner of Labour and Goregaon Police Station.

4. The notice dated 19th December 1992 was displayed on the notice board by the Complainant requesting therein the workmen to join their duty after signing undertakings, but they refused to do so. Thus, since 20th December 1992 onwards, the workmen are not reporting for duty though they are assembling at the gate of the factory. The workmen are agitating, shouting slogans and preventing loyal workmen from entering the factory premises and creating tense atmosphere. The strike of the workmen is illegal. The Act and action of the workmen is an unfair labour practice covered under items 5 and 6 of Schedule III of the M.R.T.U. and P.U.L.P. Act, therefore, filed the present complaint to restrain the Respondent union, their agents, servants, members from holding demonstration at the residence of the partners of the Complainant and also claimed that the workmen should not give any threats, intimidation to any officials, partners, supervisors, managerial staff and loyal workmen.

5. The Respondent union has filed its written statement at Exh. U-2 and denied the allegations of unfair labour practices covered under items 5 and 6 of Schedule-III of the M.R.T.U. and P.U.L.P. Act. The allegations that the workmen started sit down strike from 17th December 1992 are denied. It is contended by the Respondent union that in fact the Complainant firms are engaged in unfair labour practices covered under items 6 of Schedule II and item 9 of Schedule IV of the M.R.T.U. and P.U.L.P. Act, and for that purpose, they have filed Complaint (ULP) No. 11 of 1993 which is pending before the Industrial Court, Mumbai. According to the Respondent, the Complainant has refused to allow the workmen to resume their duty from 17th November 1992, therefore, again a separate Complaint (ULP) No. 610 of 1993 was filed by the Respondent union, which is also pending before the Industrial Court, Mumbai, under items 6 of Schedule II and under items 9 and 10 of Schedule IV of the M.R.T.U. and P.U.L.P. Act. The Respondents have denied the contents of the documents placed on record by the Complainant, including the notice and letters referred to above. The Respondents has also denied the incident dated 19th December 1992 of obstructing T. N. Pande or giving slogans in filthy and abusive language. The Respondent union has also denied that the workmen prevented Shri Ravi Kumar Iyyer and threatened him. According to the Respondent, false allegations are made against them of preventing loyal workmen from taking entry in the factory premises or attending their duty. Further, it is contended by the Respondent that the Complainant started activities to break down the union and unity of workmen. It is denied by the Respondents the allegation that the workmen have created tense atmosphere in the factory premises.

6. Heard the Learned Advocate for the Complainant. The Respondent and their Advocate remained absent.

7. On the basis of the pleadings of the parties, my learned predecessor was pleased to frame following issues to which I have recorded my findings as under :—

ISSUES	*FINDINGS*
(1) Whether the Complainant company has proved that the Respondents have committed unfair labour practices under items 5 and 6 of Sch. III of the M.R.T.U. and P.U.L.P. Act, 1971 ?	Yes.
(2) Whether the Complainant is entitled to get any reliefs a claimed in this complaint ?	Yes.
(3) What order ?	Complaint is allowed.

Reasons

8. The Complainant is allowed to lead oral evidence by way of affidavit and accordingly *vide* Exh. C-16 they have filed affidavit of Mr. Yagnesh Jhaveri partner of the Complainant company on 7th December 2002 and since the matter is being adjourned for his cross-examination several times, but the Respondent failed to cross-examine him, therefore, the order was passed below Exh. C-1 on 6th June 2003 to the effect that the matter to proceed further in absence of the Respondents.

9. The Complainant has placed on record the documents *viz.* letter dated 29th November 1991 regarding formation of union in the factory of the Complainant, charter of demands dated 5th December 1991 submitted by the Respondent union memorandum of settlement dated 17th August 1992 before the conciliation officer, letter dated 11th November 1992 sent by the Respondent alleging unfair labour practices against the Complainant to which the Complainant has given its reply dated 18th November 1992, notice dated 15th November 1992 sent by the Respondent union to the Complainant proposing strike of the workmen with effect from 2nd December 1992, the notices dated 17th December 1992 and 18th December 1992 displayed by the Complainant on the notice board, the written complaint of Pande regarding the incident of 19th December 1992, the written complaint of Ravi Kumar Iyyer dated 19th December 1992 and the complaint of Mrs. Swapna Pawar dated 19th December 1992. On the basis of these documents referred above, the Complainant is trying to establish as to how the Respondent union and their member workmen indulged in unfair labour practices covered under items 5 and 6 of Schedule III of the M.R.T.U. and P.U.L.P. Act, 1971.

10. Since 20th December 1992 onwards the workmen are not reporting for duties though they are assembling at the gate of the factory. The workmen are agaitating, shouting slogans in filthy language against the management and providing loyal workmen from entering the factory premises and thereby creating tense atmosphere around the factory premises. The strike is illegal being without statutory notice. The Complainant tried their level best to settle the matter amicably, but the Respondent union is adamant and not interested to settle the dispute. By proposed illegal strike, the intention of the Respondent union is to cause less and damage to the Complainant, therefore, necessary to restrain them, their agents, servants, members or associates from holding demonstration either at the residence of the partners of the Complainant or in the factory premises and further to restrain them from using force, giving threats to the officials, partners, managerial staff and loyal workmen.

11. The Complainants's witness Shri Jhaveri, who filed his affidavit at Exh. C-6 by way of examination-in-chief for the Complainant company has reiterated the entire facts as described in the present complaint. The Respondent union has failed to cross-examine the witness of the Complainant, therefore, the testimony of the witness Jhaveri has gone unchallenged. The Complainant on the basis of the documents and the oral evidence referred above, succeeded in establishing the unfair labour practices covered under items 5 and 6 of Schedule-III of the M.R.T.U. and P.U.L.P. Act, 1971. Therefore, I answer the issues Nos. (1) and (2) in the affirmative and proceed to pass following order —

Order

(1) Complaint (ULP) No. 1675 of 1992 is allowed.

(2) It is declared that the Respondents have engaged in unfair labour practices covered under items 5 and 6 of Sch. III of the M.R.T.U. and P.U.L.P. Act, 1971.

(3) The Respondents their agents, servants, members or associates are hereby restrained from holding demonstration at the residence of partners of the Complainant. The Respondent union, their agents, servants, members or association are hereby restrained from giving any threats, intimidations, using force against the officials, partners, supervisors, managerial staff and loyal workmen from preventing / obstructing, interfering with their normal work or entry in the factory premises.

(4) No order as to costs.

P. P. PATIL,
Member,
Industrial Court, Mumbai.

Mumbai,
Dated the 12th August 2003.

K. G. SATHE,
Registrar,
Industrial Court, Mumbai,
Dated the 14th August 2003.

IN THE INDUSTRIAL COURT, MAHARASHTRA AT MUMBAI.

COMPLAINT (ULP) No. 298 OF 1997.—Bhartiya Kamgar Karmachari Mahasangh, 5, Navalkar Lane, Dr. Mane Hall, Opp. Prarthana Samaj, Girgaum, Mumbai 400 004.—*Complainant. Versus* (1) M/s. Corporation Couriers Limited, Plot No 170, Gujrathi Socy. Road, Vile Parle (E), Mumbai 400 057. (2) Shri Ragavan Sarathi, Chairman and Managing Director, M/s. Corporation Couriers Limited, Vile Parle (E), Mumbai 400 057.—*Respondents.*

In the Matter of Complaint of unfair labour practices under items 1(*a*), (*b*), 4(*a*), (*f*) and item 6 of Sch. II and under items 5, 6, 9 and 10 of schedule IV of the M. R. T. U. & P. U. L. P. Act, 1971.

Present.— Shri. P. P. Patil, Member, Industrial Court, Mumbai.

Appearances.— Shri. S. A. Sawant, Advocate for Complainant Union.

Shri. Suresh Babu, Advocate for Respondents.

JUDGMENT AND ORDER

(Dated the 4th August 2003)

1. This complaint is under items 1(*a*), (*b*), 4(*a*), (*f*) and item 6 of Sch. II and items 5, 6, 9 and 10 of schedule IV of the M. R. T. U. & P. U. L. P. Act, 1971. The Complainant union Bhartiya Kamgar Karmachari Mahasangh is claiming that the Respondents engaged in unfair labour practices under items 1(*a*), (*b*), 4(*a*), (*f*) and 6 of Schedule II and items 5, 6, 9 and 10 of Schedule IV of the M. R. T. U. & P. U. L. P. Act, by keeping its employees temporary years together, threatening employees with discharge or dismissal if they joined a union and they proceed to lock out or to close its business, harassing employees because of union activities, favoring one set of workers regardless of merits, indulging in acts of force or violence and not implementing award, settlement or agreement.

2. The facts in brief of the complaint are as under :—

The Complainant is a trade union registered under the Trade Unions Act, 1926. Respondent No. 1 is one of the reputed couriers company engaged about 110 employees, including permanent and temporary employees. Respondent No. 2 is Chairman and Managing Director of the Respondent No. 1 company. Majority of employees employed by the Respondent No. 1 company are members of the Complainant union. In fact, the process and formation of the union was started from 1st October 1996, which was not liked by the Respondent No. 2, therefore, started harassing the employees, who are members of the Complainant union.

3. The Complainant union sent a charter of demands, including revision in service conditions of employees. Large number of employees have been kept on temporary basis without extending them the benefit of permanency though they completed 240 days of service continuously, and they are doing identically work like permanent employees. The Respondents are not issuing identity cards. The Respondents are asking the employees to do work more than 8 hours, but not paying them overtime wages.

4. The Respondent by transferring permanent employees intending to close their business in utter disregard of the statutory provisions.

5. The Respondents by purshis Exh. C-6 adopt affidavit of Mr. Arun Sambhaji Satam Exh. C-4 as the written statement to the complaint, therefore, the said affidavit is considered as the written statement. It is contended in the written statement by the Respondents that the main complaint is for the relief of permanency of casual employees and stay to transfer some of the employees. According to the Respondents, the transfer orders are issued in the normal course of business, therefore, do not constitute any unfair labour practice. Further contended by the Respondents that in relation to the suffering from less in the business on account of stiff competition since December, 1997 in the couriers industry and substantial customers located in Mumbai, suddenly discontinued their business with the Respondents. Various customers, who discontinued their business with the Respondent company, the management decided to do ply the permanent employees working in Mumbai to other location where their services could be properly utilised, and in this view of the matter decided to transfer some of the permanent employees. It is denied by the Respondents the allegations of engaging in unfair labour practices. It is admitted by the Respondents that Chandrashekhar S. Sawant is a permanent employee. The Respondents have stated in their written statement that the complainant union is instigating the employees to defy the orders of transfer, therefore creating disturbance in the administration. Lastly, it is contended by the respondents that the relief of permanency of casual employees and the relief against the transfer orders dated 18th March, 1998 are separate causes of action, which would fall outside the purview of the present complaint.

6. On the basis of the pleadings of the parties, my learned predecessor was pleased to frame the following Issues to which I have noted my findings as under :—

Issues.—	*Findings.*—
(1) Does it prove that the concerned employees have been deprived from giving them status of permanent employees ?	No.
(2) Does it prove that the Respondents have made discrimination in giving monthly wages to the concerned employees ?	No.
(3) Whether the Respondents are guilty for unfair labour practices as alleged ?	No.
(4) What order ?	Complaint is dismissed.

Reasons

7. The Complainant union has come with two fold grievances, firstly since when they started forming union, its members employees are harassed by way of transferring them out of Mumbai if they joined a union, organise a union or took any part in union activities, and secondly the employees are kept temporary years together with an intention to deprive them from getting permanency and other benefits. The unfair labour practices covered under items 1(*a*), (*b*), 4(*a*), (*f*) and item 6 of Sch. II of the M. R. T. U. & P. U. L. P. Act claimed against the Respondents are relating to threatening employees with discharge or dismissal if they joined a union, or threatening a lock out or closure if union is organised. The unfair labour practices covered under clauses (*a*) and (*f*) of item 4 of Sch. II of the Act are corresponding to discharging or punishing employees because they urged other employees to join a union or discharging office bearers or active members on account of their union activities and proposing or continuing a lock out deemed to be illegal. All these unfair labour practices referred to above are relating to the employer, but the burden is on the Complainant union to prove with cogent and

trustworthy evidence. With the help of the oral evidence of witness Mr. Baba Moria and in support of some xerox copies of unproved identity cards of the employees, the Complainant union is trying to establish the unfair labour practices as alleged. The witness Mr. Baba Moria for the Complainant union has stated in his evidence about process of formation of the Complainant union started from October 1996, but this witness is silent on the issue of harassment, threatening to employees with discharge or dismissal, lock out or closure if they join a union or punishing any employee because he urged other employees to join union or active union members discharge. This witness Mr. Morya his failed to state about the alleged unfair labour practice covered under item 6 of Sch. II of the M. R. T. U. and P. U. L. P. Act which relates to proposing or continuing lock out deemed to be illegal under the Act. In short, the oral evidence of the witness Mr. Morya does not disclose unfair labour practises covered under items 1(*a*), (*b*), 4(*a*), (*f*) and 6 of Sch. IV of the M. R. T. U. & P. U. L. P. Act. In the cross examination, witness Mr. Morya has admitted the fact that in the month of May 1998, many permanent employees left the service of the Respondent company by tendering their resignation and his union has filed a separate complaint against the closure of the company. The Respondent company has examined its witness Mr. Arun Satam, who was the Manager (Administration) of the Respondent Company, but presently he is not in employment of the Respondent company because he has resigned the job in the month of January, 1999. The witness Mr. Satam has made a statement on oath that about separate Complaint (ULP) No. 507 of 1995 filed by the Respondent company in the Industrial Court, Mumbai, for declaring unfair labour practices against the union of Bhai Jagtap. Further this witness has admitted total strength of 110 employees of the Respondent company was in the year 1997, out of which 70 employees were permanent. The temporary employees are shown in Annexure-F attached with the complaint engaged for short period of 3 months, who were issued indentity cards. But this witness has denied of rendering continuous service by the temporary employees mentioned in Annexure-F or completing 240 days of continuous service during a year. It has came in the evidence of the witness Mr. Satam about the benefit of the ESI schemes extended to the employees and the employees started go slow tactics after April, 1997 and most of the permanent employees tendered their resignation in March, 1998. In the evidence witness Mr. Satam has admitted that his company is still in existence and the Respondent company had not given any letter to temporary employees before termination of their service on closure of the business. On the basis of the evidence referred above, the complainant union is trying to establish unfair labour practices covered under items 1(*a*), (*b*), 4(*a*), (*f*) and 6 of Sch. II of the M. R. T. U. & P. U. L. P. Act. The learned Advocate for the Complainant union has relied on the case of Deepak K. Joshi *V/s*. Bombay General Kamagar Sabha and others, reported in *1986 (53) FLR 324 Bombay,* wherein held —

> " Notice of closure-the Industrial Court found in reality in nature of lock out to pressurise workmen to leave union membership and the petitioner has shown willingness tore-open his business if workmen leave union. The findings of the Industrial court up held."

But, in the instant as, no notice of closure is served by the Respondent company and no evidence of intending to close business or declaring the lock out to prassurise the workmen so that they shall leave the union membership not brought on record by the Complainant union, therefore, the ratio laid down in the above referred case is not applicable to the facts of the present complaint. In fact, there is no evidence produced by the Complainant union to substantiate their grievance of unfair labour practices, committed by the Respondents covered under item 1(*a*), (*b*), 4(*a*), (*f*) and 6 of Sch. II of the M. R. T. U. & P. U. L. P. Act.

8. The Complainant union seems to be very serious about unfair labour practices covered under items 5, 6, 9, and 10 of Sch. IV of the M. R. T. U. & P. U. L. P. Act, because temporary employees are deprived from their legitimate rights to regularise service or getting benefit of permanency, because they became members of the Complainant union and taking part in union activities. Item 6 of Sch. IV of the Act says about unfair labour practices on the part of the employers if the employees continue as badali, casual or temporary for years together with the object of depriving them the status and privileges of permanent employees. The witness for the Complainant union Mr. Morya has deposed that about 27 temporary employees have completed 240 working days continuously in a year. The names of the temporary employees are shown in Annexure-F filed alongwith the complaint wherein the date of joint, designation and working place is also mentioned. At the beginning, the witness Morya has stated that on in all 110 employees were engaged by the Respondent company, out of which 70 employees were temporary and remaining employees were parmanent. This witness Mr. Morya is not firmed as to how many temporary or permanent employees are working with the Respondent company. The Complainant union seems to be serious for fighting cause of 27 temporary employees mentioned in Annexure-F to the complaint. The reason given by the Complainant union of not making permanent these temporary employees as mentioned in Annexure-F to the complaint because they are members of the Complainant union and taking active part in union activities. The Respondent company is placing reliance on the oral evidence of their witness Mr. Satam, according to whim, temporary employees were engaged for short period of 3 months and none to them have completed 240 days, continuous service during year. In the cross examination, witness Satam has admitted that the Respondent company has not applied for lay off or retrenchment. Further this witness has admitted that the fact of filing Complaint (ULP) No. 560 of 1995 and not Complaint (ULP) No. 507 of 1995. According to this witness, the temporary employees were doing the work of delivery of letters and parcels and the work of temporary employees was altogether different. The Complainant union by way of suggestion to this witness Mr. Satam has brought on record in his cross examination that 40 temporary employees have rendered continuous service of 240 days in a year, but this suggestion is denied. The Complainant union is not firmed as to whether 27 or 40 employees were working with the Respondent company. The Learned Advocate for the complainant union has submitted that the Respondent company by keeping the temporary employees years together engaged in unfair labour practices covered under Item 6 of Sch. IV of the M. R. T. U. & P. U. L. P. Act and the sole intention behind is to deprives them from the benefit of permanency. In support of this argument, The Learned Advocate for the Complainant union has placed reliance on the case of Sangli Municipal Council *V/s.* Dharamsingh H. Nagarkar, reported in 1991 II LLJ 865 Bombay, wherein held :

> "M. R. T. U. & P. U. L. P. Act, 1971, Sch. IV Item (6) Respondent workman given appointment orders every month and this continued for 15 months No order of appointment issued thereafter for Respondent workman- But another person appointed- Case, held, is covered by Sch. IV, Item 6 - Employer has committed unfair labour practice under the said item."

In the case referred above, there was a dispute about appointment of a person recommended by the State Selection Board and not making employee permanent. In the instant case there is no question of appointment of fresh candidate in consultation with the Selection Board, therefore, the facts of the above referred case are totally different than the facts of the present complaint, hence the ratio of the said case is not applicable. He has further relied on the case

of Maharashtra Small Scale Industries Development Corporation *V/s.* The Industrial Court, Nagpur and others reported in *1990 I CLR 711 Bombay,* wherein held that -

" M. R. T. U. & P. U. L. P. Act, 1971, Sch. IV, Item 6- Giving of permanency status-Respondent No. 2 employed as Salesman but worked as Assistant for several years-Not made permanent- The wording of Item 6 seems to be wide enough and the complaint would squarely fall under the said item."

The Controversy in the above referred case was for determination as to whether the Respondent No. 2 was working as a Assistant for several years at the behest of the petitioner. The petitioner was not making the Respondent No. 2 permanent because the Respondent No. 2 was not qualified for the post of Assistant. In the instant case, the nature of duties of temporary employees was to deliver latters and parcels to the customers as per the Respondent company, but the witness Mr. Morya for the Complainant union has not stated as to which kind of duties the temporary employees are discharging. More statement of completing 240 working days in a year without supporting evidence or document difficult to rely on such statement. There was no attempt from the complainant union either to produce muster roll/ Attendance register or asking the Respondent company to produce the same. Further reliance is place by The Learned Advocate for the complainant union on the decision in the case of Divisional Forest Officer Gadchiroli *V/s.* Madhukar Ramji Undiwade and others reported in *1995 II CLR 292 Bombay* and wherein it is held -

"The Industrial Court was justified in holding that the complainant in each complaint of the complaints were in continuous service and has completed 240 days of continuous service and that they were given appointments as Forest Guards with artificial breaks with the sole intention to deprive them of all the benefits of permanent employees."

He has further relied on the case of Laxman Mahadeo Teli *V/s.* Principal Shri Pancham Khemraj Mahavidyalaya, Sawantwadi and others, reported in *1989 I CLR 89 Bombay,* wherein held.

"Long spell of uninterrupted service confers on employee mantle of permanency and not enternal suspense of temporaries."

Continuous working for 340 days without any break is the foremost and important criteria for proving the claim of unfair labour practices against the employer by not making an employee permanent. Thus, long spell of continuous service without break and continued him intefinately in temporary capacity, no doubt, the employer can be connected with the unfair labour practices covered under Item 6 of Sch. IV of the M. R. T. U. & P. U. L. P. Act. But in the instant case, there is no sufficient evidence on record to prove continuous service rendered by 27 temporary employees mentioned in the Annexure-F to the complaint.

9. The Learned Advocate for the Respondents has placed reliance on the case of Bajaj Auto Limited *V/s.* R. P. Sawant and others reported in 2000 II LLJ 17 Bombay wherein held that -

"M. R. T. U. & P. U. L. P. Act, 1971 - Secs. 28 and 30 Schedules 5, 6, 9 and 10–Morely employment for some part of every year without sinister object of employer to deprive such temporary employees of status and privileges of permanent employees not unfair labour practices falling within mischief of Item 6."

Further reliance is placed by The Learned Advocate for Respondent on the case of Madhymik Siksha Parishad, Utter Pradesh *V/s.* Anil Kumar Mishra and others, reported in *1994 I LLW 851 SC* where in held that -

> "It is difficult to envisage for them the status of workmen on the analogy of provisions of Industrial disputes Act, 1947, importing incidents of completion of 240 days work Legal consequences that flow from work for that duration under the Industrial Disputes Act, are entirely different - Completion of 240 days work does not under that law import right to regularisation - Merely imposes certain obligation on employer at the time of termination of service - that analogy cannot be imported in an extended or enlarged from here Direction of High Court to take Respondents - back to service as casual workers and continue their service, set aside."

It is clear on the basis of the ratio laid down in the above cited cases that to attract provisions of Item 6 of Sch. IV of the M. R. T. U. and P. U. L. P. Act, responsibility shifts on the shoulders of the employee to prove their continuous service for 240 days or years together as temporary, casual or badli employees and the object behind it is to deprive them from getting status and privileges of permanency. In fact, the Act does not define precisely what is unfair labour practices, therefore, necessary to refer the Schedules II, III and IV of the Act. The Court must bear in mind that consequences of declaration of any act of the employer are penal, therefore, has to construe the provisions cautiously. In the instant case, the Complainant union has miserably failed to prove that their members employees mentioned in Annexure-F to the complaint continuously worked 240 days or working continuously years together, but their services are not made permanent with the sole object of depriving them of the status and privileges of permanent employees.

10. Looking to the nature of working of the employees mentioned in Annexure-F to the complaint as explained by the respondent company and failure to bring sufficient evidence for proving of discharging services continuously 240 days without any break, the complainant union has failed to prove that the Respondent company engaged in unfair labour practices covered under Item 6 of Sch. IV of the M. R. T. U. and P. U. L. P. Act.

11. The allegations are also made against the respondents of indulging in the act of force or violence and not implementing the award, settlement or agreement, therefore, committed unfair labour practices covered under Items 9 and 10 of Sch. IV of the M. R. T. U. and P. U. L. P. Act but these allegations are also remained unproved for want of evidence. The Complainant union could not bring evidence to the satisfaction of this Court as to which settlement, award or agreement not implemented by the Respondent and what kind of indulgence in the act of force or violence. In absence of such evidence, the Complainant union cannot claim of involvement of the Respondents in the alleged unfair labour practices. The Learned Advocate for the Complainant union during the course of his arguments has submitted that the establishment of the Respondent has been closed since March, 1999, therefore, atleast consider the relief of permanency and benefit thereto till the said date. But for this purpose, the Complainant union has to establish that its members employees were continuously working for 240 days during the year and on this issue there is no evidence, except the bare word of the witness Mr. Morya for the Complainant union. There are two distinct concepts *i. e.* regularisation and termination/ resignation. The present complaint is mainly for the relief of regularisation and permanency, therefore, need not to discuss the point of termination though during the course of arguments raised by The Learned Advocate for the Respondents. Having been considered the facts and circumstances of the present complaint in the light of the oral and documentary evidence, in

my considered view there is no substance in the allegations made by the Complainant union of engaging Respondents in unfair labour practices claimed, therefore, the present complaint deserves to be dismissed as per the order passed below :—

Order

Complaint (ULP) No. 298 of 1997 is dismissed.

No order as to costs.

P. P. PATIL,
Member,
Industrial Court, Mumbai.

Mumbai,
Dated the 4th August 2003.

K. G. SATHE,
Registrar,
Industrial Court, Mumbai,
Dated the 7th August 2003.

IN THE INDUSTRIAL COURT AT MUMBAI

APPEAL (IC) No. 170 OF 1996.—The General Manager, The Best Undertaking, Best Bhawan, Mumbai 400 001.—*Appellant. Versus* Shri Narayan Shamrao Lavand, Lokmanya Nagar, Room No. 18, Pada No. 2, Behind Raja Thakur Vidyalaya, Wagale Estate, Thane.— *Respondent.*

In the Matter of an appeal under Sec. 84 of the BIR Act, 1946, against the Order dated 10th October 1996 passed by Vth Labour Court, Mumbai, in Application (BIR) No. 126 of 1995.

Present.—Shri P. P. Patil, Member, Industrial Court, Mumbai.

Appearances.—Mr. R. G. Hegade Advocate for Appellant.

Mr. S. A. Khanolkar Advocate for Respondents.

JUDGMENT AND ORDER

(Dated the 8th August 2003)

1. The Appellant General Manager, BEST Undertaking is challenging the legality and propriety of the order dated 10th October 1996 passed by Vth Labour Court, Mumbai, in Application (BIR) No. 126 of 1995 who was pleased to reinstate the Respondent in continuity of service with full back wages.

2. The facts in brief of the present appeal are as follows :—

On 9th September 1994 the Respondent was discharging his duty as bus conductor, whose bus was checked by inspectors Nos. 56 and 285 at Khodadad Circle at about 16 hours of bus stop route No. 4 Ltd./ 12 Ltd. etc. Bus No.5758 of route No. 12 Ltd. /Sr. 8 was manned by the Respondent. The Inspector boarded the bus and started checking tickets of the passengers in the bus. While checking the bus inspector found that one passenger sitting on the single seat of left side entrance and on demand he produced a ticket which was kept in his ring. The said ticket was of Rs. 5.35 plus 15 paise denomiation punched at stoppage No. 17 "down" and the number of ticket was 030210724. The said ticket was not dealt with the ticket memo of the Respondent. The bus inspector made enquiry with the said passenger as to whether he had any other ticket with him and the said passenger replied that he had no other ticket with him and the only ticket is issued by the Respondent. The said passenger had also informed the bus inspector that he had boarded the bus at Andheri West and occupied the seat. During enquiry, said passenger had also disclosed the payment of Rs. 10 made to the Respondent and asked for ticket for Mohammed Ali Road. Thereafter, the Respondent Demanded change of 50 paise and issued the ticket from his cash bag. Bus Inspectors Nos. 285 and 56 searched the cash bag of the Respondent and found two tickets of Rs. 65.10 bearing No. 350-345754 and 350-345755. These tickets were kept in seperate Compartment of the case bag. On enquiry, the Respondent did not reply and kept quiet. The inspectors recorded statement of the Respondent, who has given his statement in his hand writing on the reverse side of the ticket memo. His cash bag was checked and found 85 paise in excess and Rs. 75 was mixed by the Respondent with the case bag. Inspector No. 56 submitted his report to the higher authority on the basis of which the Respondent was served with the chargesheet of theft, fraud, dishonesty in connection with the business or property of the undertaking, gross negligence in work and breach of any rules or regulations covered under standing orders 20(c), 20(j) and 20(k). Thereafter, an enquiry was initiated against the Respondent. Reasonable opportunity was afforded to the Respondent during enquiry. The enquiry against him was held in accordance with the principles of natural justice. As per findings of the Trying Officer, the charges under standing orders 20(c) and 20(k) were proved against the Respondent and thereafter punishment of dismissal from service was imposed on him by the Appellant.

3. Initially, the Respondent challenged the enquiry conducted against him on the ground that it was not fair, legal and proper and the findings of the trying officer are pervers, therefore, the order of dismissal is illegal. Also the grievance was made by the Respondent that if it is assumed that the charges are proved against him, but those are of minor nature, therefore, the punishment of dismissal from service is harsh and shockingly disproportionate, which is liable to be quashed and set aside.

4. After having been given an opportunity to the parties to lead oral and documentary evidence, the learned Labour Judge was pleased to interfere with the order of dismissal and directed the appellant undertaking to reinstate the Respondent in continuity with service and pay him full back wages by Order dated 10th October 1996 which is impugned in the present appeal.

5. The impugned order dated 10th October 1996 is challenged on the grounds that the learned Labour Judge without application of mind passed the said order by interfering with the order of dismissal. Several other grounds are also taken in the memo of appeal for challenging the said impugned order such as, appreciation of evidence, past service record of the Respondent, gravity of misconduct and discretion unreasonably exercised by the learned Labour Judge.

6. Heard the learned Advocates for the appellant and the Respondent.

7. The following points arise for determination :—

Points.—	*Findings.*—
(1) Whether the appellant Undertaking has proved that the impugned order dated 10th October 1996 is illegal, arbitrary and suffers with perversity, therefore, liable to be quashed and set aside ?	Yes.
(2) What order ?	Appeal is allowed.

Reasons

8. At the outset, there is no dispute about the nature of working of the Respondent and his employment as bus conductor with the appellant. On 9th September 1994, the Respondent was doing his job as bus conductor on the bus No. 5758 on route No. 12 Ltd./ Sr. No. 8 and the said bus was checked at about 16-00 hours by the inspectors Nos. 56 and 285 on the same day. The Respondent filed purshis Exh. U-3 before the Labour Court and thereby declined to lead any oral evidence. Therefore, no evidence is available on record to support the contention of the Respondent that the enquiry initiated against him was not fair, legal and proper and based on the principles of natural justice. Under such circumstances, there was no other alternative with the learned Labour Judge except to go through the enquiry papers placed on record and scrutinise the same scrupulously. Accordingly, the learned Labour Judge has given his finding in its order about carefully going through the enquiry papers on the basis of which it reveals that sufficient opportunity was given to the Respondent during enquiry and ultimately come to the conclusion that there was no violation of the principle of natural justice and hence held that the enquiry initiated against the Respondent was fair legal and proper. The next important question before the learned Labour Judge was about the findings of the Enquiry Officer whether based on material and evidence or not. The learned Labour Judge while deciding this issue has come to the conclusion that the findings of the enquiry officer are well supported by the evidence on record in the enquiry, therefore, it cannot be said that such finding is perverse. While discussing the issue of findings of the Enquiry Officer, the learned Labour Judge in its judgement has specifically mentioned that ample evidence was before the Enquiry Officer to find the Respondent guilty of the charges levelled against him and there is no error apparent on the face of the record. In this view of the matter, the learned Labour Judge has given findings to issue Nos. (1) and (2) in negative which were the material issues. Issue No. (3) is on the point of punishment of dismissal from service whether legal and Issue No. (4) is relating to the relief of reinstatement and back wages, Issues Nos. (3) and (4) are combinely discussed and decided by the learned Labour Judge by taking help of the observations made by the Enquiry Officer in his report. The learned Labour Judge has reproduced the findings of the Enquiry Officer while dealing with the issues Nos. (3) and (4) in para 10 of its judgement and the said findings being relevant and important for deciding the present appeal, this Court considers necessary to reproduce the same as under —

> "I may mention here that the bus was going in down direction. Conductor had issued the ticket of Rs. 5.35+10 ps. punched in down direction bearing No. 030-210724, which was a used ticket intentionally. Likewise, he had preserved two used tickets of Rs. 1.65+10 ps. bearing No. 350-345754 and 755 of up direction with an intention to issue the same in his return journey *i.e.* up direction, with an ulterior motive to pocket the legitimate revenue of the Undertaking. Even the 85 paise found ecess pot of bag check was not disputed by the Conductor 91672 and he had not given any justification for the same. All these actions on the part of the Conductor 91672 prove the dishonest action on his part. Therefore, charge under S. O. 20(c) Dishonesty in connection with the business of the Undertaking is proved conclusively against Conductor 91672.

Delinquent employee conductor 91672 himself has admitted before the Investigating Inspectors as well as written statement that he had mixed up the personal cash of Rs. 75 in the cash bag. So he has served 2 tickets his bag. This is against the Rules and instructions given to the Conductor. Therefore, the charge under S. O. 20(k) Breach of any rule or regulations for the running and maintenance and of any dept. is also proved conclusively against Conductor 91672. Charge under S. O. 20 (j) Gross Negligence is redundant."

9. When the learned Labour Judge given a finding to Issues Nos. (1) and (2) in the negative, the only question for determination was as to whether the punishment of dismissal from service was shockingly disproportionate. The learned Advocate for the appellant has placed reliance on the several reported cases on the point of punishment of dismissal from services. Out of which, first case is B. C. Chaturvedi *V/s.* Union of India and others reported in 1996 I CLR 389-SC wherein held —

"If the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the High Court/Tribunal, it would appropriately mould the relief, either directing the disciplinary/appellate authority to reconsider the penalty imposed or to shorten the litigation, it may itself, in exceptional and rare cases, impose appropriate punishment with cogent reasons in support thereof ".

Further held in supra that—

"In view of the gravity of the misconduct namely, the Applicant having been found to be in possession of assets disproportionate to the known source of his income, the interference with the imposition of punishment was wholly unwarranted."

Further has placed reliance on the case of M/s. Hind Constructions and Engineering Co. Ltd. *V/s.* Their Workmen reported in AIR 1965 S. C. -917 where in it is held that—

"In is now well settled law that the Tribunal is not to examine the finding or the quantum of punishment because the whole of the dispute is not really open before the Tribunal, as it is ordinarily before a Court of appeal."

Reliance is also placed on the case of Janatha Bazar *V/s.* Secretary Sahakari Noukar Sangh and others reported in 2000 III CLR 568 SC, wherein held that —

"In case of proved misappropriation, in our view, there is no question of considering past record. It is the discretion of the employer to consider the same in appropriate cases, but the Labour Court cannot substitute the penalty imposed by the employer in such cases."

He placed further reliance on the case of U. P. State Road Transport Corporation and other *V/s.* A. K. Parul reported in 1998 Supreme Court Cases (L&S) 1994, wherein held that —

"Aggrieved by that, this appeal is filed the Appellant. This Court consistently has taken the view that while exercising judicial review, the court shall not normally interfere with the punishment imposed by the authorities and this will be more so when the Court finds the charges were proved."

Reliance is also placed on the case of State Bank of India and another *V/s.* Samarendra Kishore Endow and another, reported in 1994 Supreme Court Cases (L&S) 687 wherein held that —

"Departmental Enquiry-Punishment-Scope-Held, High Court/Administrative Tribunals cannot interfere if punishment has been imposed is harsh, after holding enquiry. It is considered that the punishment imposed is harsh, the Proper course is to remit the case back to the Appellate or the Disciplinary Authority. Further held, scope of judicial review of punishment in cases where enquiry has been held is different from the cases where no enquiry has been held."

The learned Advocate for the Appellant has given more emphasis during the course of his arguments on the point of proving misconduct involving misappropriation or corruption, may be small or large, for which only adequate punishment is dismissal, In support of his submission, he has placed reliance on the case of Municipal Committee, Bahadurgarh *V/s.* Krishnan Behari and thers reported in 1996 Supreme Court Cases (L and S) 538 wherein held that : In a case of involving corruption, there cannot be any other punishment other than the dismissal. Any sympathy shown in such cases is totally uncalled for and opposed to public interest. The

amount misappropriated may be small or large, it is the act of misappropriation that is relevant. The learned Advocate for the Appellant assailing the impugned judgement made submission on the point of issuing used tickets by the Respondent and collected fair, which amounts to grave misconduct being related with the corruption, misappropriation of the Appellant's amounts, therefore, the punishment of dismissal from service is appropriate punishment, which does not call for any interference. In support of his submission, he has placed reliance on the case of Pandurang Kashinath Wani *V/s.* Divisional Controller, MSRTC, Dhule and others reported in 1995 I CLR 1052 Bombay, wherein held that —

> "Punishment-Petitioner, a Bus Conductor-Held, guilty of issuing used tickets, not issuing tickets after collecting fare and the like-Held that the punishment of dismissal was justified."

10. The learned Advocate for the Respondents has supported the order of the learned Labour Judge and the views taken and urged that justice must be rempered with mercy and erring workmen be given an opportunity to reform himself, and the Labour Court can interfere even though it comes to conclusion that the enquiry held is fair and lawful, and he place reliance on the case of K. C. P. employees Association, Madras *V/s.* The Management of K. C. P. Limited and other reported in AIR 1972 SC 474 wherein held that —

> "In Industrial Law interpreted and appalled in the perspective of part IV of the constitution, the benefit of reasonable doubt on law and facts, if there be such doubt, must go to the weaker section, labour. The Tribunal will dispose of the case making this compassionate approach but without over stepping the proved facts."

Further, the learned Advocate for the Respondent has placed reliance on the case of Scooters India Limited *V/s.* Labour Court, Lucknow and others reported in 1989-Supreme Court Cases-(L&S)-180, wherein held —

> "It cannot therefore be said that merely because the Labour Court had found the enquiry to be fair and lawful and the findings not to be vitiated in any manner, it ought not to have interfered with the order of termination of service passed against the Respondent in exercise of its powers under Sec. 6(2-A)."

Further reliance is placed by the learned Advocate for the Respondent on the case of Chief Executive Officer, Sangli Zilla Parishad *V/s.* Panchaxari Sidlingappa Mogali reported in 1999 I CLR 1049 wherein held that —

> "Its purpose is only to determine on an examination of the record, whether the inferior tribunal has exceeded its jurisdiction or has not proceeded in accordance with the essential requirements of the law which it was meant to administer. More formal or technical errors, even though of the law, will not be sufficient to attract this extraordinary jurisdiction."

Further reliance is placed on the case of Consolidated Pneumatics Tool Company (India) Limited *V/s.* The President, The Association of Engineering Workers and other reported in 2001 I CLR 394 Bombay, wherein held that —

> "According to me, he therefore, cannot be accused or charged of theft or dishonesty of the said instrument as he was carrying the same as against his own token which was lying in the stores department. No doubt, the Petitioner company has examined store keeper Shri Pednekar but his oral testimony is no substitute for the documentary evidence which deliberately appears to have been suppressed from the Enquiry Officer as well as from the Labour Court."

The learned Advocate for the Respondent, during course of his arguments, heavily placed reliance on the above referred cases of which the facts are entirely different from the facts of the present case, therefore, the ratio laid down therein are not applicable to the case of the Respondent.

11. On the point of punishment of dismissal from service for the charge of misappropriation, the learned Advocate for the Respondent has placed reliance on the case of Mahadeorao Manikrao Shinde *V/s.* The Industrial Court, Aurangabad and others reported in 1992 II CLR 165 Bombay, wherein held that —

> "The Petitioner should not be visited with such sever punishment of loss of entire back wages and that the proper and adequate punishment should have been denial of back wages to the extent of 10 per cent of the total back wages."

Also reliance is placed on the case of Municipal Corporation of Greater Bombay *V/s.* Sopan Yeshwant Mohite and others, reported in 1996 II CLR 250, wherein held that :—

> " The discretion exercised by the Labour Court is not found to be unjust, unwarranted or unfair by the Industrial Court. The Industrial Court after affirming the finding of the Labour Court that the evidence produced in the domestic enquiry did not prove that accusation levelled against the workmen and that the punishment of dismissal from service was wholly unjustified, hastened to observed that the Labour Court was in error in allowing only 50% back wages."

But in the instant case, the allegations are proved during enquiry and established by the appellant the discretion exercised by the Labour Court is found unjust and unwarranted. Therefore, no assistance to the Respondent case of the cases referred to above.

12. Further it is held in the case of U. P. State Road Transport Corporation and others *V/s.* Mahesh Kumar Mishra and other reported in 2000 II CLR 10 SC, wherein it is held that :—

> "If the punishment imposed by the disciplinary authority or the Appellate authority shocks the conscience of the High Court/Tribunal, it would appropriately mould the relief, either directing the disciplinary/appellate authority to reconsider the penalty imposed or to shorten the litigation, it may itself, in exercise and rare cases, impose appropriate punishment with cogent reasons in support thereof."

The facts of the above referred cases are not identical with the facts of the present case, therefore, I am not in agreement with the submissions made by the learned Advocate for the respondent. When the enquiry was legal, fair and proper and based on the principles of natural justice and also the findings of the enquiry officer was not perverse, under such circumstances, the punishment imposed against the Respondent of dismissal of service was not shockingly disproportionate. An employee involved in misappropriation or corruption, may be for lesser amount, that does not make any difference while considering the quantum of punishment.

13. The Learned Labour Judge misdirected while appreciating the evidence and unreasonably exercised its discretionery power by interfering with the order of punishment of dismissal from service imposed by the appellant. It is not a first case in which discretion or mercy can be shown when the serious misconduct is proved against the Respondent. The Learned Labour Judge erred in holding that the misconduct proved against the Respondent is of minor nature. Therefore, I find substance in the present appeal, which deserves to be allowed, and hence I proceed to pass following order :—

Order

(1) Appeal (IC) No. 170 of 1996 is allowed.

(2) The judgement and order dated 10th October 1996 passed by Vth Labour Court, Mumbai, in Application (BIR) No. 126 of 1995 is hereby quashed and set aside.

(3) Records and proceedings be sent to Vth Labour Court, Mumbai.

(4) No order as to costs.

P. P. PATIL
Member,
Industrial Court, Mumbai.

Mumbai,
Dated the 8th August 2003.

K. G. SATHE,
Registrar,
Industrial Court, Mumbai.
Dated the 14th August 2003.

IN THE INDUSTRIAL COURT, MAHARASHTRA AT MUMBAI

APPLICATION (MRTU) No. 04 OF 2002.—Maharashtra Rajya Rashtriya Kamgar Sangh (INTUC) C/o. Rashtriya Mill Mazdoor Sangh, Mazdoor Manzil, G. D. Ambekar Marg, Parel, Mumbai 400 012.—*Applicant.*—*Versus*—M/s. Shamvik Glasstech Pvt. Ltd., Off LBS Marg, 249, Balrajehwar, Post Box No. 17796, Mulund West, Mumbai 400 080. — *Non Applicant.*

In the Matter of application under Sec. 11 of the M. R. T. U. & P. U. L. P. Act 1971 for registration as a recognised union.

Present.—Shri P. P. Patil, Member, Industrial Court, Mumbai.

Appearances.—Mr. M. V. Palkar Advocate for Applicant Union.

Mr. S. J. Patkar Advocate for Non Applicant Co.

Judgement and Order

(Dated the 13th August 2003)

1. The Applicant Maharashtra Rajya Rashtriya Kamgar Sangh has filed this application under Sec. 11 of the M. R. T. U. & P. U. L. P. Act 1971 for registration as a recognised union.

2. The facts in brief of the application are as under :—

The Applicant union is registered under the Indian Trade Unions Act and the persons mentioned in para 2 of the application are elected office bearers of the union. It is contended in the application that for whole of the period of 6 calender months *i. e.* from November, 2001 to 31st May 2002 the total 46 workmen of the non applicant company were the members of the Applicant union. On 19th May 2002, it was decided in the meeting of the members of the Applicant union to apply for registration as recognised union. The non Applicant company is engaged in the manufacture of I. C. machines, glass containers, spare parts, glass bottles etc. The Applicant union is the only union operating in the non Applicant company, which is not a recognised union in any other undertaking. The Applicant union maintains accounts duly audited by the qualified Chartered Accountant. The Applicant union has its own constitution.

3. The non Applicant company has filed its written statement at Exh. C-2 wherein stated that it is a company incorporated under the Companies Act, 1956 engaged in the manufacture and sale of IS machines used for manufacture of glass bottles and manufacture and sale of spare parts of IS machines and also experts the same. It is further contended in the written statement that the non Applicant employs 45 workmen, 23 managerial staff and 10 Managers (Total 78). Further contended that the application filed by the Applicant union is bad in law, misconceived and illegal as only 45 workmen are engaged in the non Applicant company. It is admitted by the non Applicant union that the information given by the Applicant by letter dated 13th December 2001 about names of office bearers and the unit committee members as well as membership of employees. Its is denied by the non Applicant company that for whole of the period of six calender months, the Applicant union has membership of the employees of the non Applicant company. About rest of the facts mentioned in the application, the non Applicant company states that they are not aware of the facts stated in the application.

4. Heard the learned Advocates for the Applicant union and the non Applicant company.

5. The following points arise for my determination :-

Points—	*Findings*—
(1) Whether the Applicant union has proved that there are 50 or more employees employed by the non Applicant company or were employed on any day of the preceding 12 months ?	Yes.
(2) Whether the Applicant union has proved that the employees of the non Applicant company are its members not less than 30% of total number of employees employed by the non Applicant company ?	Yes.
(3) Whether the Applicant union has proved that they are entitled for registration as a recognised union ?	Yes.
(4) What order ?	Application is allowed.

Reasons

6. The Applicant union is claiming that it is registered under the Indian Trade Union Act as per Certificate No. HO-III-D-9208 and to establish this fact placed on record said certificate issued by the Deputy Registrar, Maharashtra State, Mumbai, *vide* Exh. U-5. The Applicant union has placed on record the copy of its Constitution, audit report, copy of balance sheets and its registered address. The Applicant union has examined its witness Ramesh Sable, the unit Vice President of the Applicant union, who made a statement on both about membership of 47 employees. It has come in the evidence of witness sable that the Applicant union was registered under the Trade Unions Act and it is operating with the non Applicant company. Witness Sable has stated in his evidence about the general body meeting held on 19th May 2002 in which it was resolved to apply for registration as a recognised union. The Applicant union has placed on record the resolution at Sr. Nos. 5 and 6 in the minutes book of the meeting dated 19th May 2002. The ressolutions are at Exh. U-6. The notice dated 28th April 2002 served for the general body meeting is at Exh. U-7. The counterfoils of receipts of subscriptions are placed on record by the Applicant union. Nothing is coming in the cross examination of the witness Sable adverse to the claim of the Applicant union. The non Applicant company has filed purshis Exh. C-4 and thereby decline to lead any oral evidence on its behalf.

7. Except the present Applicant union, no other union is coming forward with the grievance to disentitle the claim of the Applicant union for its registration as a recognised union. The learned advocate for the non Applicant company has submitted that the pre conditions for grant of recognition is that the Applicant union must prove that 50 or more employees engaged or employed and this fact is not established by the Applicant union. Further, the learned advocate for the non Applicant company has urged that the Applicant union has failed to give sufficient evidence to show that they have got membership of not less than 30% of the total number of employees employed by the non Applicant company. The learned Advocate for the Applicant union has submitted that the burden was on the non Applicant company to prove that they have engaged 45 workmen, 23 managerial staff and 10 managers *i. e.* total 78 employees. No evidence is brought on record by the non Applicant company to prove that they have engaged only 45 workmen. It was not impossible for the non Applicant company to bring on record that they have employed only 45 workmen and other staff does not include in the category of employees. The non Applicant union has not disproved with cogent and trustworthy evidence that 47 employees are members of the Applicant union, out of total number of employees engaged by the non Applicant company. From the record it is clear that there is no other contesting union showing their claim that they are functioning or operating with the non Applicant company. The evidence brought on record by the Applicant union is sufficient to prove that the non Applicant company has engaged 50 employees or more than 50 employees or were employed on any day of the preceding 12 months and they have got membership of not less than 30% of the total number of employees employed by the non Applicant company, Therefore, I find substance in the application filed by the Applicant union, which deserves to be allowed and hence I proceed to pass following order :—

Order

(1) Application (MRTU) No. 04 of 2002 filed by the Applicant union is allowed.

(2) Certificate for registration as recognised union be issued under Sec. 11 of the M. R. T. U. and P. U. L. P. Act, 1971 to the Applicant union *i. e.* Maharashtra Rajya Rashtriya Kamgar Sangh (INTUC) for the employees engaged in the non Applicant company *i. e.* M/s. Shamvik Glasstech Private Limited, Mulund, (West), Mumbai 400 080.

(3) No order as to costs.

P. P. PATIL
Member,
Industrial Court, Mumbai.

Mumbai,
Dated the 13th August 2003.

K. G. SATHE,
Registrar,
Industrial Court, Mumbai,
Dated the 19th August 2003.

IN THE INDUSTRIAL COURT, MAHARASHTRA AT MUMBAI

BEFORE SHRI J. P. LIMAYE, MEMBER

COMPLAINT (ULP) No. 1187 OF 2000.—Shri Prakash S. Alinje, Suswagatam Co-op. Housing Society, Postal Colony Road, Chembur, Mumbai 400 071.—*Complainant.*—*Versus*—Municipal Corporation of Greater Mumbai. (2) Shri S. V. Ranganathan or his successors, The Municipal Commissioner of Greater, Mumbai. (3) Shri Ajit Kumar Jain or his successors, Additional Municipal Commissioner (City). All having their offices at Municipal Head Office, Mahapalika Marg, Mumbai. (4) Shri Shahu Dange or his successors, The Dy. Municipal Commissioner Zone V. (5) Ward Officeer M/West, Municipal Corporation of Greater Mumbai. 4 and 5 having their offices at Municipal Ward Office M/West.—*Respondents.*

CORAM.—Shri J. P. Limaye, Member,

Appearances.—Shri Prakash Devdas, Advocate for Complainant.

Mrs. K. K. Soran, Advocate for Respondents.

Judgement

1. This is a complaint filed by the Complainant alleging an unfair labour practices under item 9 of Schedule IV along with interim relief application supported by affidavit and the application for condonation of delay against Respondent. The brief facts which are narrated regarding commission of unfair labour practice committed by the Respondent Corporation are as below.

2. It is submitted that the Respondents have engaged in unfair labour practice under item 9 of Schedule IV on and from 2nd May 2000. It is further submitted that the Complainant who is an employee of the Corporation working as Rent Collector in 'M' Ward and have joined the service of the Corporation in the year 15th April 1975 and the duties which are he is carrying regarding tenancy of municipal land and such other clerical work relating to the area assigned to him. It is further stated that the Complainant was posted in the said region. While he was on duty on 11th November 1999, he issued through oversight a rent receipt bearing No. 27028 dated 10th November 1999 rent of October, 1998 to one Shri B. S. Karande about the transfer of tenancy bearing No. E-6, Room No. 4, Chembur. It is further stated that the error which is committed by the Complainant was considered by the Respondent to serious act of misconduct and he was put under suspension from 9th October 1999 till 2nd May 2000. The chargesheet was issued accordingly and *vide* dated 2nd December 1999. The copy is enclosed herewith as Annexure 'A' and the charges narrated therein that the Complainant failed to follow the due procedure in respect of transfer of tenancy and has exceeded his power and, therefore, he has committed misconduct. However, in the said chargesheet, did not specify the misconduct alleged to have been committed as per the Standing Orders applicable to it. In this context, it is stated that the Model Standing Orders of the Industrial Employment (Standing Orders) Act are applicable to the Respondent Corporation in the absence of Certified Standing Orders. The enquiry accordingly held and the punishment order dated 2nd May 2000 was issued to the Complainant. Vide the said order, the Respondent has punished the Complainant with holding of next increments of 2 years on permanent basis and period of suspension from 9th October 1999 to 2nd May 2000 *i. e.* till the date of resuming on duty was treated as uncondoned and further warned that such lapses will be viewed seriously if committed by him in future. After the receipt of the said punishment order, the Complainant preferred an Appeal to the Competent Authority to withdraw the order of punishment but no response was received from the Competent Authority and subsequently in the said Appeal, the Complainant submitted that the grave injustice is caused to him as a result of punishment inflicted by the punishing authority and also states that the lapse on the part was a mere clerical error which has taken place through over sight and the same was not deliberate one and there was no ulterior motive in issuing rent receipt. As a result of the oversight, the rent receipt came to be issued and the said proved misconduct from Model Standing Orders. It is also stated that the Model Standing Orders applicable to the Complainant, the punishment of with holding stoppage of increment is not provided for and, therefore, the minor misconduct of stoppage of increment of three years on permanent basis, uncondonation of suspension period from 9th October 1999 to 2nd

May 2000 is severe punishment for minor lapses. Thus, due to the said lapses or error, no damage of whatsoever nature is caused to the Corporation. It is further submitted that for minor misconduct, a sensure or warning is sufficient one and such punishment is provided in the Model Standing Orders which are applicable to the Complainant. It is also submitted that in seeking the punishment of stoppage / withholding the increment is illegal and unfair and in breach of Standing Orders applicable to the Corporation and its employees.

3. It is further submitted that the suspension was also not warranted and, therefore, the entire period of suspension is unfair and it is settled principle that the suspension of employee should not be ordered too lengthy but only in case of grave misconduct if proved likely to result in dismissal or removal of the employee, then, it should be resorted to or if an employee interfering in the matter of conduct of enquiry or likely to destroy the documents against him in such case, only suspension can be resorted. But in the case of the Complainant, there was no such situation to suspend him for long period for 6 months. Hence, the suspension of the Complainant was not warranted. Thus, in limini, the Complainant submitted that inflicting of punishment other than the punishment provided in the Standing Orders is inviolation of the Standing Orders. Hence, the same *i. e.* the order of punishment needs to be quashed and set aside.

4. Thus, by narrating the brief facts regarding commission of unfair labour practice alleged to be committed by the Respondent, the Complainant prayed reliefs as prayed in the prayer clause of the complaint.

5. After filing the present complaint, the notices were issued and in response to the same, the Respondents appeared and filed affidavit in reply below Ex. C-4, and subsequently, by filing pursis, prayed that the said affidavit be treated as written statement. In the said affidavit in reply *i. e.* written statement, the Respondent has stated that the contentions and allegations made in the entire complaint by the Complainant are totally false, frivolous and does not disclose any cause of action. Hence, on this count alone, the complaint needs to be disposed of. It is further submitted that the Complainant miserably failed to prove through the documents that the Respondents have committed and engaged in an unfair labour practices under item 9 of Schedule IV of the Act on and from 2nd May, 2000. It is further submitted that the entire enquiry and the procedure which has been followed by the Respondents for conducting the enquiry is as per the Municipal Conduct and Discipline Rules which are applicable to the Corporation and its employees and the Model Standing Orders are yet to be adopted by the Corporation. Hence, till then the provisions of manual of departmental enquiry will prevail and the copy of the same is also there on record. It is further submitted that the allegations regarding commission of unfair labour practice as alleged in para 3(e) of the complaint. The Complainant has to prove the said contention beyond doubt. It is further submitted that after issuance of the chargesheet the detailed enquiry was followed as per the procedure and the delinquent employee *i. e.* the Complainant has participated in the enquiry and after completion of the enquiry and receipt of findings of the Enquiry Officer, the punishment order was issued to the Complainant. After the receipt of the same, the Complainant preferred an Appeal to the Additional Municipal Commissioner but the same was dismissed and the punishment which has been levelled was confirmed. Thus, in limini, it is the contention of the Respondent Corporation in the written statement that the punishment which has been levelled against the Complainant is after following due process of law and the punishment which is effected is as per the provisions of Municipal service Conduct and Discipline Rules and also by considering the provisions of the Standing Orders. It is also submitted that the misconduct which has been committed and the same is the provisions in the departmental enquiry and all the enquiry papers are there on record in the present complaint which has been filed by the Respondent and the Enquiry Officer by following due procedure and after due participation of the Complainant, come to the conclusion that the alleged misconduct against the Complainant is categorically proved beyond doubt and hence, the punishment which is inflicted is fair, proper and legal and the same cannot be said against the provisions of law applicable and prayed accordingly.

6. After filing the said affidavit in reply *i. e.* written statement, the matter was proceeded further and in the mean time, the application for condonation of delay was filed and order below Ex. U-2, dated 29th June 2002 was passed and the delay was condoned and then the

matter was proceeded further for final hearing, as the Complainant submitted that he does not want to press interim relief application *i. e.* Ex. U-4. Hence the matter was taken up for final hearing on merits. Subsequently, both the rival parties led oral evidence *i. e.* Ex. U-11 and Ex. C-10 and cross examined the witnesses and after completion of the oral and documental evidence, both the Counsels argued vehemently regarding issue involved in the complaint. By referring to the various case laws in support of their contentions and pleadings. After going through the entire conventions of the parties and the documents and oral evidence which is on record and the case laws referred, the issues which need to be decided in the present complaint are as below :—

Points	*Findings*
(1) Whether the Complainant prove that the Respondent has committed unfair labour practices under item 9 of Schedule IV of the M. R. T. U. and P. U. L. P. Act, 1971 ?	Not proved.
(2) What order and relief ?	As per final order.

Reasons

7. While arguing the issue, the learned Counsel for the Complainant submitted that the punishment of stoppage of increments which has been inflicted against the Complainant is against the provisions of law and Standing Orders applicable and the stand taken by the Respondent that the Standing Orders are not applicable cannot be considered as considering the case laws and citation which has been referred. It is argued that in absence of the Certified Standing Orders, the Model Standing Orders will prevail and by taking the provisions of Model Standing Orders, submitted that as per the Model Standing Orders 26 and its sub-clause as per misconduct which has been alleged against the Complainant is come under the purview of negligence in performing the duty *i. e.* Standing Order No. 26(c) and in this regard it is the contention of the learned Counsel that the punishment which has been stated therein only can be given *i. e.* he can be warned, ensured or fine. So according to him, permanent stoppage of increment for 3 years is harsas punishment and alongwith the same, the period of suspension is also not condoned and it amounts to double punishment and it is beyond the scope of Standing Orders applicable. Hence, the order of punishment needs to be quashed and set aside and Respondent Corporation is at liberty to give minor punishment as narrated in the Standing Orders 26 of the Industrial Employment (Standing Orders) Act. It is further argued that the misconduct which has been alleged against the Complainant and subsequently it has been alleged to be proved in the entire process of enquiry is a clerical error and there was no deliberation on the part of the Complainant while issuing the rent receipt to one Shri Karande and the same mistake which would have been corrected subsequently if the other superior officers who are expected to verify and check the receipt book of the Complainant issued and in the receipt itself, it has been stated that " चूक भूल द्यावी घ्यावी ". Hence, it cannot be disputed that the error which has been committed by the Complainant is not a deliberate one and there was no any intention of the Complainant to help Shri Karande or obtain from him any illegal gratification and it is also not the case of the Respondents. Thus, by arguing the issue relying on the case laws *i. e.*

1. Municipal corporation of Greater Mumbai *V/s.* Laxman Saidoo Timannapatti, 1991-I-CLR-653.

2. Pyarelal *V/s.* Municipal Council, Ramtek, 1992-II-LLN-910.

3. Tamil Nadu Water Supply and Drainage Board, *V/s.* M. D. Vinayak and Ors., 1991-I-CLR-677.

4. Tamil Nadu Electricity Board, *V/s.* Central Organisation of Tamil Nadu Electricity Employees Union, 1997-II-LLJ-19.

It is pryed that the prayer and the complaint be allowed and the order of punishment be quashed and set aside.

8. In reply, the learned Counsel for the Respondents has stated that in the present proceeding, the Complainant has not challenged the process of enquiry or procedure which is followed or the document which has been filed therein and the entire documents which are there on record regarding the enquiry proceeding below Ex. C-8 or admitted by the Complainant, only grievance remains regarding the punishment. In this context, it is further argued that the rent receipt of transfer or premises which has been issued by the Complainant has stated that it is by mistake, the same cannot be admitted as receipt is issued in the name of Shri Karnade and originally, the tenant was Smt. Agavane. So it cannot be said that by mistake instead of Smt. Agavane, the receipt is given to Shri Karande. Apart from this, he has also given the receipt of the *adhoc* payment of Rs. 5,000 which is expected to be paid by the party who has placed on record the application for getting the tenancy to be transferred in their name. In all, considering the said facts in the entire proceeding which has been categorically proved that the misconduct is committed by the Complainant whether it was intentional or without intention but if the tenancy would have been got transferred, then there would have been huge loss to the Corporation and the said mistake only come to the knowledged of the superior when they were checking the record regarding the transfer of tenancy and the application filed by the concerned party that whether the entire procedure which needs to be followed prior to transferring the tenancy has been followed or not and in this thereafter, when they come to the conclusion that in the present case, it is a mistake apparent on the face of record, the chargesheet was issued and after full-fledged enquiry and the receipt of the findings of the enquiry officer, the punishment was given to the Complainant is also based on the provisions of Municipal Disciplinary rules and also considering the provisions of the Standing Orders. Thus, prayed that no consideration needs to be given to the citations and case laws referred as misconduct which has been committed by the Complainant is a serious and grave act of misconduct and prayed accordingly.

9. Thus, the rival Counsel argued vehemently regarding the issue involved therein and also referred the case laws by the Complainant in support of their contentions and pleadings. I have also gone through the entire facts on record and also provisions of the Standing Order No. 24 in this punishment which are to be inflicted is narrated. In the present case, it is not a grievance of the Complainant that the Respondent has issued a chargesheet alleging the act of misconduct against the Respondent with intention to harass or otherwise but in limini, it is the contention of the Complainant that the mistake that the misconduct which has been alleged has been admitted to be committed by the Complainant but it is his contention that the same is due to oversight and as the tenancy was not transferred. Hence, there was no loss caused to the Respondent Corporation and also there is no allegations against the Respondents that the enquiry which is proceeded further is without following due process of law or while conducting the enquiry, the Respondents have not followed the principles of natural justice. In fact, the entire enquiry proceedings and the documents which are on record including the chargesheet and the findings of the Enquiry Officer and the documents which are there on record in the enquiry proceeding are admitted by the Complainant except the part of the punishment. So the issue in the present complaint is only to decide whether the punishment awarded by the Respondent to the Complainant whether the same is disproportionate or otherwise considering the nature of misconduct which has been alleged and admitted by the Complainant in the entire enquiry proceedings. In this context, I say that whether there is a mistake occurred due to oversight or deliberate one if it would have been not located while inspecting the documents by the superior, definitely the tenancy would been got transferred to the said Shri Karande and the same also without following the due procedure which needs to be followed and the expected to be followed by the Rent Collector who is initially issuing the rent receipt and it is a fact on record while issuing the said receipt, he has not gone through the entire documents which have been preferred by the said Shri Karande and it is a case of the Complainant that as on the day, there was very rush in the office, hence, the said mistake occurred but in this context, I say that the said tenancy was in the name of Smt. Agavane and Shri Karande who has come to pay the rent accordingly and instead of Smt. Agavane, he has written the name of Shri Karande as in fact, he was well aware that Shri Karande is not the tenant but Smt. Agavane is the tenant. If he would have been by stating the name of Shri Karande in the said receipt, would have said that the same amount on behalf of Smt. Agavane,

there is no question of any change in tenancy in the name of Shri Karande. The fact which the Complainant cannot be denied that due to demise of Smt. Agavane, Shri Karande who was paying their rent and if at all is to be transferred in his name, the entire procedure which needs to be followed has not followed by Shri Karande and only for this mistake, he is charging his superior that if at all while scrutinising the rent receipt next to him *i. e.* Supervisor or Administrative Officer verify and if they found out the said mistake and if they would have pointed out the same to Shri Karande, it would have been easily rectified by him. But in this context, I say that this lame excuse and the stand which has been taken by Shri Karande seems to be afterthought and it has no consideration but apart from this, it is not the case before me regarding the said misconduct is proved or not but only the punishment which is disproportionate or not. If we read the provisions of Model Standing Orders No. 26. A workman may be warned or censured, or subject to and in accordance with the provisions of the Payment of Wages Act, 1936, fined for any of the following acts and omissions :—

(*a*) absence without leave without sufficient cause.
(*b*) late attendance.
(*c*) negligence in performing duties.
(*d*) neglect of work.
(*e*) absence without leave or without sufficient cause from the appointed place of work.
(*f*) entering or leaving or attempting to enter or leave the premises of the establishment except by a gate or entrance appointed.
(*g*) committing nuisance on the premises of the establishment.
(*h*) breach of any rule or instruction for maintenance or running of any department.

If we read the same, the said act of misconduct comes under the purview of 26(c) *i. e.* negligence in performing the duty and as per the said provisions, the punishment which has been awarded *i. e.* warn censure or *fine* as per the provisions of Payment of Wages Act and in the present case, I say that the stoppage of increment permanently for 3 years which is awarded to the Complainant by the Corporation cannot be said that the said punishment does not come under the purview of the said provisions. Thus, I say that the said punishment comes under the purview of Model Standing Order No. 26(C) *i. e. fine* under the provisions of Payment of Wages Act. It also cannot be disputed that the error whether the same is minor or major that cannot be the issue but due to the said clerical mistake, the huge loss was going to be accured to the Respondent Corporation and the said fact cannot be disputed as it is a fact on record that the alleged charges in the chargesheet which have been issued to the Complainant is categorically admitted by the Complainant but only it is his contention that the same accured due to oversight. Thus, I say the duty which he is performing, the said mistake which has been stated by the complainant occured due to oversight are not permitted and it is expected that the work which is entrusted to him is to be done by due deligence and atmost responsibility and in the present case, the Complainant failed to do so. Hence, the considering the facts on record, it cannot be said that the punishment which is levelled against the Complainant is disproportionate and against the provisions of Model Standing Order applicable to the corporation. Thus, considering the facts on record and the citations and case laws referred by the parties and the reasons stated above, I pass the following order.

Order

The complaint is hereby dismissed.
No order as to costs.

J. P. LIMAYE,
Member,
Industrial Court, Mumbai.

Mumbai,
Dated the 16th August 2003.

K. G. SATHE,
Registrar,
Industrial Court, Mumbai,
Dated the 29th August 2003.

ON BEHALF OF GOVERNMENT PRINTING, STATIONERY AND PUBLICATION, PRINTED AND PUBLISHED BY SHRI PARSHURAM JAGANNATH GOSAVI, PRINTED AT GOVERNMENT CENTRAL PRESS, 21-A, NETAJI SUBHASH ROAD, CHARNI ROAD, MUMBAI 400 004 AND PUBLISHED AT DIRECTORATE OF GOVERNMENT PRINTING, STATIONERY AND PUBLICATION, 21-A, NETAJI SUBHASH ROAD, CHARNI ROAD, MUMBAI 400 004, EDITOR : SHRI PARSHURAM JAGANNATH GOSAVI.